

No. 10245

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CHARLES CHAPLIN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

CHARLES CHAPLIN,

Respondent.

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Transcript of the Record

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Upon Petitions to Review a Decision of the  
Tax Court of the United States

FILED

NOV - 6 1942



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES:

For Taxpayer:

LOYD WRIGHT, ESQ.

HERSCHEL B. GREEN, ESQ.

J. R. WHITE, C. P. A.

For Comm'r:

FRANK T. HORNER, ESQ.

BYRON M. COON, ESQ.

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Docket No. 98795

CHARLES CHAPLIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1939

- May 26—Petition received and filed. Taxpayer notified. Fee paid.
- May 26—Copy of petition served on General Counsel.
- June 29—Answer filed by General Counsel.
- June 29—Request for Circuit hearing in Los Angeles filed by General Counsel.
- July 7—Notice issued placing proceeding on Los Angeles calendar. Answer and request served.

1940

March 6—Hearing set June 3, 1940, in Los Angeles, California.

June 3—Hearing had before Mr. Black on motion of petitioner to continue on the next calendar at Los Angeles, California, showing good cause. No objection by respondent. Motion to continue granted. Motion to continue filed at hearing. Copy served on both parties.

1940

Sept. 19—Hearing set Dec. 2, 1940. Los Angeles.

Mar. 22—Motion for continuance to next calendar at Los Angeles filed by taxpayer.

Mar. 22—Order restoring proceeding to the Los Angeles, California, calendar for hearing in due course entered.

Dec. 30—Hearing set Feb. 17, 1941, in Los Angeles, California.

1941

Feb. 26—Hearing had before Mr. Mellott on merits. Submitted. On motion of respondent amend answer. Granted. Petitioner given leave to reply. Stipulation of facts. Appearance of H. B. Green. Motion for leave to file amended answer, and amended answer filed. Petitioners brief due 4/28/41. Respondents 5/28/41. Reply 6/17/41.

Mar. 14—Transcript of hearing 2/26/41 filed.

Apr. 23—Brief and proposed findings of fact filed

1941

by taxpayer. 4/23/41 copy served on General Counsel.

May 28—Brief filed by General Counsel.

June 16—Reply brief filed by taxpayer. 6/16/41 copy served on General Counsel. [1\*]

June 20—Motion to cite the decision of the United States Supreme Court in the Burnet case filed by General Counsel.

June 20—Motion to cite the decision of the United States Supreme Court in the Burnet case granted.

1942

Feb. 24—Findings of fact and opinion rendered. Mellott, Div. 11. Decision will be entered under Rule 550. 2/25/42 copy served.

Mar. 20—Computation of deficiency filed by General Counsel.

Mar. 23—Hearing set April 22, 1942, on settlement.

Apr. 4—Consent to settlement filed by taxpayer.

Apr. 6—Decision entered. Mellott, Div. 11.

June 8—Supersedeas bond in the amount of \$126,854.38 approved and ordered filed.

June 8—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

June 8—Proof of service filed by taxpayer.

June 23—Certified copy of an order from the 9th Circuit extending time to 9/18/42 to prepare and transmit the record filed.

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\*Page numbering appearing at top of page of original certified Transcript of Record.

1942

- July 1—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.
- July 9—Narrative statement of evidence filed by taxpayer, with proof of service thereon.
- July 9—Praecipe for record filed by taxpayer, with proof of service thereon.
- July 9—Notice of filing praecipe for record filed by taxpayer.
- July 11—Proof of service of filing petition for review filed by General Counsel (2).
- July 16—Stipulation extending the time to Aug. 5, 1942, to complete the record filed.
- Aug. 5—Agreed designation of portions of the record to be printed filed.
- Aug. 5—Agreed designation of portions of record, proceedings, and evidence to be contained in record on review filed.
- Aug. 5—Statement of points filed by General Counsel, with proof of service thereon.
- Aug. 6—Certified copy of order from the 9th Circuit re consolidation for briefing, hearing, argument and decision upon a single consolidated transcript of record to be certified and transmitted to this Court by the Clerk, U. S. Board of Tax Appeals, a certified copy of this order to be incorporated in the record filed.
- Aug. 6—Certified copy of order from the 9th Circuit, extending the time to 9/18/42 to complete the record filed. [2]

United States Board of Tax Appeals

Docket No. 98795

CHARLES CHAPLIN,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IT:LA:FHG-90D) dated March 2, 1939, and as a basis for his proceedings alleges as follows:

1. The petitioner is an individual with address at 1416 North La Brea Avenue, Los Angeles, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A), was mailed to the petitioner on March 2, 1939.

3. The taxes in controversy are income taxes for the calendar year 1935. The deficiency asserted by the Commissioner is \$65,208.48, whereas the petitioner claims an overpayment of \$24,938.04 making a total of \$90,146.52 all of which is in controversy.

4. The determination of tax set forth in the notice of deficiency is based upon the following errors;

[3]

(a) In determining the taxable net income of the petitioner for 1935 the Commissioner erroneously included as income the amount of \$104,709 representing the fair market value of stock of United Artists Corporation released from escrow in 1935.

(b) In determining the taxable net income of the petitioner for 1935 the Commissioner erroneously included as ordinary income rather than as dividend income \$44,532.22 dividends on the escrowed stock also released from escrow in 1935.

(c) In computing the normal tax of petitioner for 1935 the Commissioner erroneously reduced the credit for dividends received by such \$44,532.22 dividends.

(d) Without prejudice to any of the above allegations of error it is further alleged that in determining the taxable net income of the petitioner for 1935 the Commissioner erroneously included as income \$44,532.22 dividends paid on the escrowed stock prior to 1935 and released to petitioner in 1935.

The facts upon which the petitioner relies as the basis for this proceeding are as follows:

(a) In 1919 petitioner and others caused United Artists Corporation to be formed and petitioner subscribed and paid for 1,000 shares of preferred and 1,000 shares of common stock of the corporation. Such shares were issued to the petitioner and recorded in his name.

(b) At the same time petitioner entered into an agreement with United Artists Corporation whereby he undertook to produce and deliver to the corporation a certain number of motion pictures which the corporation undertook to distribute.

(c) Under that agreement petitioner deposited his 1,000 shares of common stock of United Artists Corporation in escrow as guarantee of his performance of the agreement.

(d) From time to time shares of stock of United Artists Corporation were delivered to petitioner by the escrow agent pro rata as petitioner delivered pictures under the agreement or as the agreement was amended.

(e) Commencing in 1930 dividends were paid on the common stock of United Artists Corporation. Under the agreement dividends on the escrowed stock were paid to the escrow agent rather than to the stockholder of record and these dividends were retained pro tem by the escrow agent. As shares of stock were released to petitioner by the escrow agent the accumulated dividends thereon were also released. [4]

(f) At the beginning of 1935 there remained with the escrow agent, 334 shares of petitioner's stock of United Artists Corporation and \$44,532.44 accumulated dividends thereon and in that year United Artists Corporation and petitioner canceled the agreement. The 334 shares

with the accumulated dividends thereon were released by the escrow agent and delivered to petitioner.

(g) The release of the stock from escrow did not result in taxable income to the petitioner.

(h) The accumulated dividends on the 334 shares of stock amounted to \$44,532.22 and were paid to the escrow agent in the following years:

1930.....	\$ 6,680.00
1931.....	3,340.00
1932.....	3,340.00
1934.....	31,172.22
	<hr/>
	\$44,532.22

(i) The \$44,532.22 accumulated dividends released by the escrow agent in 1935 were reported in petitioner's 1935 return as dividend income.

(j) These \$44,532.22 dividends did not constitute taxable income to petitioner for 1935.

(k) Claim for refund of the overassessment resulting from the inclusion of these dividends in petitioner's taxable income for 1935 was filed with the Collector of Internal Revenue at Los Angeles on March 8, 1939.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine:

(a) That there is no deficiency in petitioner's 1935 Federal income tax.

(b) That there is an overpayment of peti-

tioner's 1935 Federal income tax of \$24,938.04.

(c) Such other and further relief as this Board may deem proper.

LOYD WRIGHT

Counsel for Petitioner,  
111 West Seventh Street,  
Los Angeles, California.

J. R. WHITE

Agent for Petitioner,  
530 West Sixth Street,  
Los Angeles, California.

Los Angeles, California. May 17, 1939. [5]

State of California

County of Los Angeles—ss.

Charles Chaplin, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein and that such statements are true to the best of his knowledge and belief.

CHARLES CHAPLIN

Subscribed and sworn to before me this 18th day of May, 1939.

[Seal] ANITA GARRETT

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires March 10, 1941. [6]

## EXHIBIT A

SN-IT-1

12th Floor,  
U. S. Post Office and Court House,  
Los Angeles, California.

Mar. 2, 1939

IT:LA

FHG:90D

Mr. Charles Chaplin,  
1416 North La Brea Avenue,  
Los Angeles, California.

Sir:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1935 discloses a deficiency of \$65,208.48 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, 1200 U. S. Post Office and Court House, Los Angeles. The signing and filing of this form will expedite the closing of your return by permitting an early

assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,  
GUY T. HELVERING, Commissioner,  
By (Signed) GEORGE D. MARTIN  
Internal Revenue Agent in  
Charge.

Enclosures:

Statement.

Form of waiver.

FHG-WSG [7]

STATEMENT

IT:LA

FHG-90D

Mr. Charles Chaplin,  
1416 North La Brea Avenue,  
Los Angeles, California.

Tax Liability for the Taxable Year Ended  
December 31, 1935.

Income tax

Tax liability \$296,064.06

Tax assessed \$230,855.58

Deficiency \$65,208.48

In making this determination of your income tax liability, careful consideration has been given to the reports of examination dated January 22, 1938 and February 14, 1939.

The additional assessment of \$6,720.00 for the

taxable year, made pursuant to the waiver of restrictions executed by you under date of December 31, 1937, has been given effect in the computation of the deficiency herein stated.

If you do not acquiesce in all of the adjustments making up the deficiency indicated, but desire to stop the accumulation of interest on that part of the deficiency resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amount of the deficiency you desire to have assessed at once. The execution of the form for the agreed portion of the deficiency will not deprive you of your right to petition the United States Board of Tax Appeals for a redetermination of the deficiency.

A copy of this letter and statement has been mailed to your representative, Mr. J. R. White, 530 West Sixth Street, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

ADJUSTMENTS TO NET INCOME  
Taxable year ended December 31, 1935.

Net income as disclosed by return.....	\$445,269.58
Additional income:	
(a) Dividend income of Trust No. 7250, Charles S. Chaplin taxable to you .....	\$ 12,000.00
(b) Value of 334 shares of stock of United Artists Corporation.....	104,709.00
	116,709.00
Net income adjusted.....	\$561,978.58

## EXPLANATION OF ADJUSTMENTS

(a) The income of Trust No. 7250, Citizens National Trust and Savings Bank, Trustee, established by you for the purpose of providing for the care and maintenance of two minor children, is held to be taxable to you. This adjustment forms the basis of the additional assessment to which you have previously assented.

(b) The fair market value of 334 shares of the capital stock of United Artists Corporation received by you in the taxable year, which value has been determined to be \$104,709.00, represents income taxable to you under the provisions of Section 22(a) of the Revenue Act of 1934.

The credit for dividends received, provided for by Section 25 (a) (1) of the Revenue Act of 1934, is adjusted as follows:

Credit claimed in your return.....	\$184,754.07
Plus: Dividends added in item (a) above.....	12,000.00
Total .....	<hr/> \$196,754.07
Less: An amount of \$44,532.22 reported as dividends in your return, representing accumulated dividends of prior years on the stock dividend mentioned at item (b) above; not dividends received in the taxable year within the meaning of section 25(a)(1) .....	44,532.22
Corrected dividend credit.....	<hr/> \$152,221.85

## COMPUTATION OF TAX

Taxable year ended December 31, 1935

Net income adjusted.....	\$561,978.58
Less: Personal exemption .....	\$ 1,000.00
Credit for dependents.....	800.00
	<hr/>
	1,800.00
	<hr/>
Balance (surtax net income).....	\$560,178.58
Less: Dividends .....	\$152,221.85
Earned income credit	
(10% of \$14,000.00).....	1,400.00
	<hr/>
	153,621.85
	<hr/>
Net income subject to normal tax.....	\$406,556.73
Normal tax at 4% on \$406,556.73.....	\$ 16,262.27
Surtax on \$560,178.58.....	279,801.79
	<hr/>
Correct income tax liability.....	\$296,064.06
Income tax assessed:	
Original, account No. 201712.....	\$224,135.58
Additional, January 1938,	
account No. 510159.....	6,720.00
	<hr/>
Total tax assessed.....	230,855.58
	<hr/>
Deficiency of income tax.....	\$ 65,208.48

TREASURY DEPARTMENT

Internal Revenue Service

12th Floor,

U. S. Post Office and Court House,  
Los Angeles, California.

Mar. 2, 1939

Office of  
Internal Revenue Agent in Charge  
Los Angeles Division  
IT:LA-FC  
Mr. J. R. White,  
530 West Sixth Street,  
Los Angeles, California.

Sir:

In re: Mr. Charles Chaplin,  
1416 North La Brea Avenue,  
Los Angeles, California.

Year: 1935.

There is enclosed a copy of a letter of this date are given above. This copy is furnished in accordance with the authorization contained in power of attorney on file in the Bureau.

Respectfully,

(Signed) GEORGE D. MARTIN  
Internal Revenue Agent in  
Charge.

Enclosure:

Copy of letter.

[Endorsed]: U.S.B.T.A. Filed May 26, 1939.

[Title of Board and Cause.]

ANSWER

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. (a) to (d), inclusive. Denies the allegations of error contained in subparagraphs (a) to (d), inclusive, of paragraph 4 of the petition.

5. (a) Admits that in 1919 the petitioner and others caused United Artists Corporation to be formed and that the petitioner subscribed for 1,000 shares of preferred and 1,000 shares of common stock of said corporation. Denies the remainder of said subparagraph (a) of paragraph 5 of the petition. [12]

(b) Admits the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d), (e) and (f) Admits the allegations contained in subparagraphs (d), (e) and (f) of paragraph 5 of the petition.

(g) Denies the allegations contained in subparagraph (g) of paragraph 5 of the petition.

(h) and (i) Admits the allegations contained in subparagraphs (h) and (i) of paragraph 5 of the petition.

(j) Denies the allegations contained in subparagraph (j) of paragraph 5 of the petition.

(k) Admits the allegations contained in subparagraph (k) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

Respondent denies that the petitioner is entitled to the relief prayed for in the last paragraph of the petition.

Wherefore, it is prayed that the petition be denied and that the respondent's determination be in all respects approved.

Signed J. P. WENCHEL

FTH

J. P. WENCHEL

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

FRANK T. HORNER,

B. M. COON,

Special Attorneys,

Bureau of Internal Revenue.

BMC:W 6/23/39

[Endorsed]: U.S.B.T.A. Filed Jun. 29, 1939. [13]

[Title of Board and Cause.]

### AMENDED ANSWER

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for amended answer to the petition filed in the above-entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. (a) to (d), inclusive. Denies the allegations of error contained in subparagraphs (a) to (d), inclusive, of paragraph 4 of the petition.

5. (a) Admits that in 1919 the petitioner and others caused United Artists Corporation to be formed and that the petitioner subscribed for 1,000 shares of preferred and 1,000 shares [14] of common stock of said corporation. Denies the remainder of said subparagraph (a) of paragraph 5 of the petition.

(b) Admits the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d) Admits the allegations contained in subparagraph (d) of paragraph 5 of the petition.

(e) Admits so much of subdivision (e) of para-

graph 5 of the petition as alleges that commencing in 1930 dividends were paid on the common stock of United Artists Corporation; that under the agreement dividends on the escrowed stock were paid to the escrow agent and these dividends were retained by the escrow agent; that as shares of stock were released to the petitioner by the escrow agent the accumulated dividends thereon were also released, and denies all other allegations therein contained.

(f) Admits so much of subdivision (f) of paragraph 5 of the petition as alleges that at the beginning of 1935 there remained with the escrow agent 334 shares of stock of the United Artists Corporation and \$44,532.22 accumulated dividends thereon, and that in that year United Artists Corporation and petitioner canceled the agreement; that the 334 shares with the accumulated dividends thereon were released by the escrow agent and delivered to the petitioner, and denies all other allegations therein contained. [15]

(g) Denies the allegations contained in subparagraph (g) of paragraph 5 of the petition.

(h) and (i) Admits the allegations contained in subparagraphs (h) and (i) of paragraph 5 of the petition.

(j) Denies the allegations contained in subparagraph (j) of paragraph 5 of the petition.

(k) Admits the allegations contained in subparagraph (k) of paragraph 5 of the petition.

6. Denies generally and specifically each and

every allegation contained in the petition not hereinbefore admitted, qualified or denied.

Respondent denies that the petitioner is entitled to the relief prayed for in the last paragraph of the petition.

Wherefore, it is prayed that the petition be denied and that the respondent's determination be in all respects approved.

(Signed) J. P. WENCHEL

FTH

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel.

FRANK T. HORNER,

Special Attorney,

Bureau of Internal Revenue.

FTH:FWT 2/21/41

[Endorsed]: U. S. B. T. A. Filed Feb. 26, 1941.

[16]

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[Title of Board and Cause.]

## FINDINGS OF FACT AND OPINION

Docket No. 98795. Promulgated February 24, 1942.

Certificates for common stock of a corporation were issued in the name of petitioner and

delivered to an escrow agent under an agreement providing that when certain photoplays were delivered to the corporation the certificates would be released to him. The agreement also provided that in the event of failure to deliver such photoplays to the corporation the certificates were to be returned to the corporation, but petitioner was permitted to vote the stock while it was held in escrow. Dividends upon the stock were deposited in a trust account and accumulated until delivery of the certificates to petitioner. Under the evidence it is held that it was the intention of the parties complete ownership of the property should vest only when the certificates were delivered by the escrow agent. The fair market value of the stock when delivered to petitioner in the taxable year was properly included in his gross income. Held, further, that the amounts accumulated in earlier years and paid over to petitioner in the taxable year are dividends rather than ordinary income.

Herschel B. Green, Esq., Loyd Wright, Esq., and J. R. White, C. P. A., for the petitioner.

Frank T. Horner, Esq., and Byron M. Coon, Esq., for the respondent.

The Commissioner determined a deficiency in petitioner's income tax for the calendar year 1935 in the amount of \$65,208.48. The petitioner claims an overpayment in the amount of \$24,938.04.

The petition alleges that the respondent erred:

(a) In including in income the amount of \$104,709, representing the fair market value of certain stock of the United Artists Corporation released from escrow in 1935; (b) in treating as ordinary income \$44,532.22 representing accumulated dividends of the United Artists Corporation released from escrow and paid over to petitioner in 1935; (c) in reducing the credit for dividends received by \$44,532.22 in computing the normal tax; and (d) without prejudice to (a), (b), and (c), in including as income \$44,532.22 dividends paid on the escrowed stock prior to 1935 and released to petitioner in that year. [17]

The proceeding was submitted on a stipulation of facts, oral testimony, and documentary evidence.

### Findings of Fact

The petitioner is a resident of Los Angeles, California. He filed his income tax return for 1935 with the collector of internal revenue at Los Angeles, California, on March 16, 1936, showing a total tax due of \$224,135.58 which was paid to the collector on the following dates:

March 16, 1936.....	\$56,033.90
June 15, 1936.....	56,033.90
Sept. 12, 1936.....	56,033.89
Dec. 15, 1936.....	56,033.89
Total.....	<hr/> 224,135.58

On February 8, 1938, a deficiency of \$7,487.89 principal and interest, assessed against petitioner for 1935, was paid to the collector according to agreement. A claim for refund of any overassess-

ment resulting from the inclusion of the \$44,532.22 in petitioner's income was filed by petitioner on March 8, 1939.

On February 5, 1919, the petitioner, Douglas Fairbanks, and Mary Pickford, artists, and David W. Griffith, producer, entered into an agreement to associate themselves together in the distribution of motion pictures thereafter produced by them. All of the parties were favorably known in all parts of the world where motion pictures were exploited and exhibited and their respective names had exceptional trade value. The agreement provided, among other things, that they would organize a corporation to be known as the United Artists Corporation (hereinafter sometimes referred to as the corporation) with two classes of stock, class A—6,000 shares of 8 percent cumulative preferred stock, par value \$100 per share, and class B—9,000 shares of common stock, no par value. Each of the parties was to purchase 1,000 shares of the preferred stock at \$100 per share, it being contemplated that this stock would be redeemed by the corporation. The common stock was to be issued and paid for in the following manner:

One thousand (1,000) shares to each of the above named persons in part consideration of the execution and fulfillment of the contract pertaining to the exploiting, marketing, distributing and turning to account of his or her motion pictures with the said corporation. The details concerning the delivery of the aforesaid common shares of stock to each of the aforesaid persons shall be more fully set forth in the agreement between said person and

said corporation pertaining to the exploiting, marketing, distributing and turning to account the motion pictures produced by such person and included in such contract. [18]

One thousand (1,000 )shares to William G. McAdoo who is to become the General Counsel of said corporation.

All of the common stock was to be issued "subject to the right of the corporation for its then existing stockholders to repurchase the same in the event of such stockholder desiring to sell any portion or all of his or her shares of common stock in said corporation to any person who is now [sic—not] actively associated with such stockholder in the business of producing photoplays \* \* \*." The substance of this provision was included in the bylaws subsequently adopted by the corporation.

On April 17, 1919, the certificate of incorporation of United Artists Corporation was filed with the Secretary of State of Delaware. It authorized the issuance of 5,000 shares of preferred stock, \$100 par value, and 9,000 shares of common stock. The preferred stock was to have no voting rights. Each holder of shares of common stock was entitled to as many votes at all elections of directors as his number of shares multiplied by the number of directors to be elected.

On February 5, 1919, petitioner signed a proposed distribution agreement which was subsequently executed by the corporation on June 13, 1919. Similar agreements were signed by Douglas Fairbanks, Mary Pickford, and D. W. Griffith. The agreement signed by petitioner provided, among other things,

that he would produce and deliver to the corporation nine photoplays of between 1,600 and 3,000 feet in length within three years from the date thereof. The corporation obligated itself to give petitioner's name "chief prominence" in the advertisements of his pictures, to use its best efforts to market the films upon a basis of sharing in gross receipts, and agreed that no franchise or territorial right for the use of such photoplays should be made without his written consent. Subdivision (i) of the "Third" paragraph of this agreement reads as follows:

(i) And in addition to the above consideration, one thousand (1,000) shares of the common stock of the said corporation to be delivered in escrow to a person or corporation to be agreed upon by the parties hereto and to be held by said person until said artist delivers to said corporation, nine (9) photoplays. Should said artist be unable to deliver nine (9) such photoplays because of illness or incapacity during the said entire period of three (3) years, said artist shall receive so many of the aforesaid one thousand (1,000) shares of the common stock of this corporation as the number of photoplays delivered by said artist to this corporation pursuant to this agreement bears to the number of nine. The balance of the shares of such common stock shall be delivered by such escrow agent to this corporation. [19]

At a special meeting of the board of directors of United Artists Corporation held on May 29, 1919, the following resolution was adopted:

Whereas in the judgment of the Board of Directors the photoplays agreed to be delivered to this Corporation under said contracts are necessary for the business of this Corporation and constitute good and sufficient consideration for the issue of five

thousand (5000) shares of the common stock of this corporation, the same being without par or nominal value:

Resolved that, in consideration of the delivery of said contracts to this Corporation the proper officers of this Corporation be, and they hereby are, authorized to issue and deliver to William G. McAdoo, Esq., one thousand (1,000) shares of no par value of this corporation fully paid and non-assessable, said shares to include the shares of no par value subscribed for by the signers of the certificate of incorporation of this Corporation, assignments of said subscriptions being held by him; and

Resolved that, in consideration of the delivery of said contracts of this Corporation, the proper officers of this Corporation be, and they hereby are authorized to issue to said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) one thousand (1,000) shares of no par value each, making a total of four thousand (4,000) shares of no par value to a person or corporation to be agreed upon by said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this Corporation, and to no other person, said four thousand (4,000) shares to be held by said person or corporation in escrow in accordance with the provisions of said contracts between said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this Corporation; and

Resolved that the proper officers of this Corporation be, and they hereby are, authorized and directed to execute an escrow agreement for the holding and delivery of said four thousand (4,000) shares of non-par value in accordance with the terms and provisions of said contracts between said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this Corporation dated February 5th, 1919, said escrow agreement to provide that while

said four thousand (4,000) shares are held in escrow, each of the aforesaid artists shall have the right to vote his or her respective holdings thereof; provided that said escrow agreement shall be approved by the general counsel of this corporation before execution of the same by its officers.

On June 9, 1919, the corporation issued 9 certificates of stock—8 for 111 shares each and one for 112 shares—in which petitioner was shown as the owner. The certificates were not delivered to petitioner, but were kept in the possession of the corporation until subsequently delivered to and deposited with the escrow agent in accordance with the agreement between petitioner and his associates and with the corporation. [20]

The following entry appears in the journal of United Artists Corporation:

June 9 [1919] Artists' Contracts.....A-4	\$25,000.00
Consideration for contracts with the four artists for delivery of photoplays to Corporation as per resolution of Board of Directors adopted May 29, 1919 (ratified by stockholders, Sept. 9, 1919)	
Capital Stock—Common .....C-7	\$25,000
Issued 5,000 shares at no par value, but regarded to have a value of \$5.00 per share (verbal advice of General Counsel)	

On July 5, 1919, the petitioner, Douglas Fairbanks, Mary Pickford, and D. W. Griffith entered into an agreement with the United Artists Corporation amending subdivision (i) of paragraph 3 of their respective agreements of February 5, 1919, as follows:

And in addition to the above consideration, one

thousand (1,000) shares of the common stock of the said corporation to be issued in the name of the said Artist in the form of nine (9) certificates, eight (8) of which shall be for one hundred and eleven (111) shares each and one of which shall be for one hundred and twelve (112) shares, said certificates to be delivered in escrow to a person or corporation to be agreed upon by the parties hereto. Upon delivery by the said Artist to the said corporation of each one (1) of the first eight (8) photoplays called for by this contract, such escrow agent shall deliver to the said Artist one (1) of said certificates for one hundred and eleven (111) shares, and upon delivery by the said Artist to the said corporation of the ninth (9th) photoplay called for hereunder, such escrow agent shall deliver to the said Artist said certificate for one hundred and twelve (112) shares. Upon the expiration of the three-year period herein provided for, so many of said certificates as are then still held by such escrow agent in accordance with the provisions of this paragraph shall be delivered by such escrow agent to the said corporation.

On August 5, 1919, the petitioner, the United Artists Corporation and one Dennis F. O'Brien, an escrow agent, entered into an agreement providing inter alia as follows:

First: The Corporation shall forthwith deliver to, and deposit with, the Depositary the nine (9) stock certificates, representing in the aggregate one thousand (1,000) shares of the common stock of the Corporation, which have been issued in the name of the Artist as aforesaid.

Second: Upon receipt of said stock certificates, the Depositary shall issue in respect thereof in the name of the Artist a certificate of deposit. \* \* \*

Third: Upon delivery by the Artist to the Corporation of each one (1) of the first eight (8) photoplays called for by the aforesaid contract, the Corporation shall notify the Depositary in writing that

the Artist is entitled to one (1) of said certificates for one hundred and eleven (111) shares, whereupon the Depositary shall deliver one (1) of the same to the Artist upon surrender by the latter of the certificate of deposit herein provided for and shall issue to the Artist a new certificate of deposit, substantially in the form of that annexed hereto, in respect of the number of shares remaining in escrow. Upon delivery [21] by the Artist to the Corporation of the ninth (9th) photoplay called for by the aforesaid contract, the Corporation shall notify the Depositary in writing that the Artist is entitled to said certificate for one hundred and twelve (112) shares, whereupon the Depositary shall deliver the same to the Artist upon surrender by the latter of the certificate of deposit which he then holds. At the expiration of said period of three years, the Depositary shall deliver to the Corporation so many of the certificates deposited hereunder as then remain in escrow and are not the property of the Artist, and the Artist shall return to the Depositary the certificate of deposit which he then holds.

Fourth: Any and all dividends which may be declared upon the shares of stock represented by the certificates deposited hereunder while the same, or any part thereof, are held in escrow by the Depositary shall be deposited by the Corporation in the Central Union Trust Company, No. 80 Broadway, New York City, in an account to be known as "United Artists Corporation, Trust Account No. 1." Upon delivery to the Artist by the Depositary, in the manner hereinbefore provided for, of each of the certificates deposited hereunder, the Corporation shall pay to the Artist one-ninth ( $1/9$ ) of all dividends which at the time of such delivery shall have been deposited in said account, together with accrued interest thereon. At the expiration of said period of three years, so much of such dividends and interest thereon as remain in said account and are not due the Artist shall become the property of the Corporation.

Fifth: The Depositary shall not have the right to vote the shares of stock deposited hereunder.

\* \* \* \* \*

Seventh: This agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

The form of the certificate of deposit was as follows:

	Certificate of Deposit.	
No.		No. of Shares
	Certificate of Deposit	

representing the Common Stock of United Artists Corporation.

This Is to Certify that there have been deposited with Dennis F. O'Brien (herein called the "Depositary"), under a written agreement, dated .....  
....., 1919, (a copy of which is on file at the office of Depositary), for the benefit of Charles Chaplin (herein called the "Beneficiary"), nine (9) stock certificates representing in the aggregate one thousand (1000) shares of common stock of United Artists Corporation, without par value, and that under said agreement the Beneficiary will be entitled to a delivery of said stock certificates or some portion thereof upon surrender hereof and upon receipt by the Depositary of a written notice from United Artists Corporation that the Beneficiary is entitled thereto under the terms of said agreement.

The holder of this certificate of deposit shall have the same voting rights as a holder of a regular certificate of common stock of United Artists Corporation.

Petitioner did not deliver any motion pictures to the corporation during the three-year period contemplated in the agreement of February 5, 1919, nor was any modification of the agreement made

during the three-year period extending the time in which the nine motion pictures should be delivered; but all the parties to the agreement continued to treat the agreement as in full force and effect. Upon the [22] expiration of the three-year period none of the 1,000 shares of stock held in escrow under the contract with petitioner was delivered back to the corporation, nor was any demand made upon the escrow agent by the corporation, or any of its officers, directors, or stockholders that such shares of stock be returned to the corporation. At the end of the three-year period none of the parties to the agreements had delivered all of the nine pictures required by their contracts to the corporation; but the depository did not turn back to the corporation any of the stock standing in their names and held by him in escrow.

In 1923 petitioner delivered to the corporation one photoplay, "Woman of Paris" which was released November 4 of that year. At that time the escrow agent turned over to him one certificate for 111 shares of stock. This left eight pictures undelivered by petitioner under his contract and eight certificates of stock still held by the escrow agent.

On November 22, 1924, the petitioner, Mary Pickford, Douglas Fairbanks, Joseph Schenck, and United Artists Corporation entered into an agreement further modifying the distribution agreement of February 5, 1919. As modified, it recites that "Miss Pickford, Chaplin, Fairbanks and Griffith are the owners of all of the preferred and common stock of the corporation, now issued and outstand-

ing'' except certain qualifying shares, and provides, among other things, that in addition to the nine pictures originally contracted for, Pickford will produce six feature photoplays and Fairbanks will produce five, all to be delivered by November 1, 1928; but neither "shall receive any additional common stock" beyond the amounts provided to be delivered to them during the term of their original contract. The agreement also provides that petitioner will produce five pictures to be delivered one each year, all to be delivered on or before January 1, 1929, instead of the eight undelivered pictures provided for in the original contract, and "The balance of the common stock of the corporation, which is now held in escrow for the benefit of Chaplin shall be delivered to him in the proportion of one-fifth ( $1/5$ ) thereof upon the delivery of each motion picture photoplay by Chaplin to the corporation."

Thereafter petitioner produced and delivered to United Artists Corporation three pictures which were released on the following dates: "The Gold Rush"—August 16, 1925; "The Circus"—January 7, 1928; and "City Lights"—March 1, 1931.

On October 31, 1928, petitioner delivered to the corporation the certificate for 111 shares of its common stock which had been released from escrow upon the delivery of the photoplay "Woman of Paris", and at said time the 889 shares still held in escrow by Dennis F. O'Brien were delivered to the corporation. All of the [23] certificates of stock were forthwith canceled, and on the same date the

corporation issued in the name of petitioner the following certificates of common stock: #83 for 166 shares; #84 for 167 shares; #85 for 166 shares; #86 for 167 shares; #87 for 167 shares; and #88 for 167 shares; a total of 1,000 shares. All of the foregoing certificates were placed in escrow with Dennis F. O'Brien pursuant to the agreement dated February 5, 1919, as amended. Thereafter on November 8, 1928, there were released from escrow and delivered to petitioner certificates #83 for 166 shares; #84 for 167 shares, and #85 for 166 shares of the common stock of the corporation.

On February 27, 1931, certificate #86 for 167 shares was released from escrow and delivered to petitioner upon completion of the picture "City Lights."

All of the pictures delivered by petitioner to the corporation were much longer than the 1,600 to 3,000 feet specified in the agreement.

On September 20, 1935, an agreement was entered into between petitioner and the corporation under which certificates Nos. 87 and 88 for 167 shares each were released to petitioner, together with accumulated dividends thereon in the sum of \$44,532.22, which had been paid to the escrow agent in the following years:

1930.....	\$ 6,680.00
1931.....	3,340.00
1932.....	3,340.00
1934.....	31,172.22
<hr/>	
Total.....	44,532.22

The dividends had been deposited in a special bank account and interest on such deposits in the amount of \$995 was paid to the petitioner when the stock and dividends were released. This amount was included in gross income in petitioner's income tax return for 1935.

The 1,000 shares of common stock issued to William Gibbs McAdoo were surrendered to the corporation in 1920. Subsequently, in 1924, 1,000 shares were issued to Joseph M. Schenck. The stock referred to in this paragraph was never put in escrow.

When the original 9 certificates totaling 1,000 shares of stock were put in escrow, petitioner did not sign them. When these certificates were canceled by the corporation and 6 certificates totaling 1,000 shares were issued in their stead and placed in escrow, petitioner signed these 6 certificates in blank.

After the organization of the corporation petitioner attended stockholders' meetings, voted at such meetings for directors and otherwise, received notices, and signed proxies the same as any stockholder. He was carried on the books of the corporation as the owner of 1,000 shares [24] of common stock. The dividends upon the stock standing in his name were deposited in a trust account in a New York bank in accordance with the escrow agreement.

In computing the deficiency here in issue the respondent determined the fair market value of the 334 shares of common stock of the United Artists

Corporation, delivered to petitioner from escrow in 1935, to be \$104,709 and added this amount to petitioner's income for that year.

In his income tax returns for 1935 petitioner treated the \$44,532.22 as dividends received in that year and not subject to the normal tax. The respondent determined that the \$44,532.22 did not represent "dividends" received in the taxable year and the amount was treated as ordinary income in determining the deficiency in tax.

### Opinion

Mellott: The first question is whether respondent erred in including in petitioner's income the fair market value of the stock released from escrow and delivered to him in 1935. This question may be answered by determining whether petitioner owned the shares prior to their delivery to him in that year.

Petitioner contends that ownership vested in him on June 9, 1919, when certificates for 1,000 shares were issued; that the consideration for the issuance of the shares was the execution by him of the distribution agreement of February 9, 1919; that the shares were placed in escrow merely as security for the performance of his part of the contract; that the "dividends" were impounded "to encourage compliance by each artist with his distribution contract"; that he was regarded by the corporation as the owner, at all times, of the stock and "exercised all incidents of ownership", except physical possession; and that he realized no taxable income when the stock was released from escrow and delivered to him.

Respondent determined that "the fair market value of the 334 shares \* \* \* received \* \* \* in the taxable year which value has been determined to be \$104,709, represents income taxable to [petitioner] under the provisions of section 22 (a) of the Revenue Act of 1934." In support of this determination respondent places considerable reliance upon the provisions of the agreement of August 5, 1919 (escrow agreement); contends that the entire record shows petitioner was not the owner of the 334 shares until they were released and delivered to him in 1935; argues it was the intention of the parties, as indicated by the various exhibits, that petitioner should not become the owner of the stock until and unless the photoplays were delivered; and insists that petitioner acquired no vested interest in it until he delivered the photoplays according to his agreement. The value of the stock [25] at the time it was released from escrow and delivered to petitioner is not contested.

Title to personal property generally passes when the parties to a transaction intend that it shall pass. *United States v. Utah, Nevada & California Stage Co.*, 199 U. S. 414. Intention is primarily a question of fact. In determining it the agreements which they signed, if unambiguous, are entitled to great weight, though consideration may also be given to the circumstances under which they were executed, the objects sought to be accomplished, the interpretation placed upon them by the parties prior to the controversy in issue, and any and all

relevant facts and circumstances tending to show what the actual intention was. The basic facts, which are not seriously in dispute, are shown in our findings. No attempt will be made to summarize them. Brief allusion will, however, be made to some of them.

On February 5, 1919, petitioner and other artists, for reasons immaterial here, agreed in writing to become associated in the organization of a corporation for the purpose of exploiting, distributing, and exhibiting motion pictures produced by them. This agreement provided that 1,000 shares of the common stock of such corporation should be issued to each of the parties and paid for "in part consideration of the execution and fulfillment" by each of a contract pertaining to the exploiting, marketing, and distributing of his or her motion pictures. Pursuant to this agreement, petitioner entered into a contract with the corporation for exploiting, marketing, and distributing 9 motion pictures to be produced by him, and an agreement with the corporation and an escrow agent was prepared and signed. These agreements set out the terms and conditions under which the 1,000 shares of common stock (which included the 334 shares here in question) were to be issued and delivered to petitioner. The terms and conditions were specific and definitely provided that petitioner should not receive any of the 1,000 shares of common stock unless and until he had produced and delivered one or more photoplays, and that all of the stock should be

received when, and only when he had delivered the required number of photoplays.

The later agreement of November 22, 1924, is equally positive in its terms. Under it petitioner became "obligated to deliver to the corporation for distribution only five (5) additional photoplays, described in the original contract instead of eight (8) undelivered pictures provided for in said contract. The balance of the common stock of the corporation, which is now held in escrow for the benefit of Chaplin shall be delivered to him in the proportion of one-fifth ( $1/5$ ) thereof upon the delivery of each motion picture photoplay by Chaplin to the Corporation." (One-sixth of the total 1,000 shares was delivered to petitioner leaving five-sixths in escrow.) This agree- [26] ment was partially carried out and under it the escrow agent delivered three additional certificates of stock to petitioner prior to 1935. The other two—the two in issue in this proceeding—were released by the corporation and delivered to petitioner in September 1935.

The terms and conditions of the agreements briefly referred to above and the actions of the parties under them indicate, in our judgment, it was the intention of the parties that ownership of the stock should not pass to petitioner until and unless he "fulfilled" the terms and conditions of his contract and delivered to the corporation the photoplays stipulated therein. In reaching this conclusion we have not overlooked the fact that the corporation prior to 1935 treated petitioner, for many pur-

poses, as the owner of 1,000 shares of its common stock. Clearly, all parties intended that he should ultimately become such owner; and, since he was permitted under the escrow agreement to vote the stock, it is not surprising that he was given the usual notice of meetings, participated in elections, and exercised other rights commonly exercised only by a stockholder. The right to vote corporate stock may be conferred by contract, as it was in the instant proceeding, even though no property in the stock has passed, cf. *Cattlemen's Trust Co. of Fort Worth v. Turner*, 182 S. W. 438. Stock is frequently voted by persons having no beneficial ownership of it. *Alger-Sullivan Lumber Co. v. Commissioner*, 57 Fed. (2d) 3. Nor do we think that the recitation in the corporate resolution of May 29, 1919, to the effect that the corporation was authorized to issue stock to the artists "in consideration of the delivery of [the distribution] contracts", justifies a conclusion that the artists thereby became the "owners" of the stock; for the shares were to be held "in escrow in accordance with the provisions of said contracts" and were so held.

The whole idea of the enterprise was cooperative. The corporation was formed for the specific purpose of distributing pictures of the artists. Each agreed to execute a contract with the corporation for the exclusive right "to market, exploit, distribute and turn to account the motion pictures that each shall produce." The contract ultimately entered into by petitioner with the corporation granted it

“the exclusive right and privilege to market and turn to account, exhibit, distribute or cause to be distributed or exhibited” the pictures which he was to produce. “All moneys derived from the license to use” the pictures were to be divided 70 or 80 percent to the artist and 20 or 30 percent to the corporation. It is apparent the corporation would have no income unless the pictures, either those produced by petitioner or those produced by the other artists, were delivered to it for distribution and exploitation. The artists did not contemplate that one of them should share in the profits of the corporation—except to a limited extent as purchasers and owners of the preferred stock— [27] unless he delivered his proportion of the pictures which were to produce the income. The mere execution of the contract was not sufficient. The “fulfillment” of the contract was equally important. Indeed it was the very essence, the sine qua non of the contract, a condition precedent to petitioner acquiring either equitable or legal ownership of the common stock. Cf. *United States v. Fourth National Bank in Wichita, Kansas*, 83 Fed. (2d) 85. We are therefore of the opinion that petitioner’s contention, to the effect that ownership of the stock vested in him on June 9, 1919, is untenable. He became the owner of the stock in 1935 when it was released from escrow, by the corporation, and delivered to him. In this connection it may be pointed out that the escrow agreement required the depository to hold the stock until “the corporation shall notify

\* \* \* [it] in writing that the artist is entitled" to receive it and this agreement was carried out.

Petitioner places considerable reliance upon the decision of the District Court for the District of New Jersey in *Schneider v. Duffy*, 43 Fed. (2d) 642, and *H. L. Carnahan*, 21 B. T. A. 893. The cited cases are, in our judgment, distinguishable upon their facts. In the first mentioned case there was a conditional assignment to the taxpayer of an equitable ownership in 1,500 shares of stock in consideration of his agreement to remain with the corporation for five years. He was "to receive and enjoy all dividends declared and paid from the date" of the assignment, including any distribution "of money, property, stocks or rights that the common stockholders \* \* \* become entitled to \* \* \*." One-fifth of the shares were to be delivered to him at the end of each year during the five-year period; but in the event of his death or refusal to carry out his obligation, the equitable assignment as to the undelivered stock was to be null and void. In deciding that the parties intended ownership of the stock to vest when the contract was signed rather than when delivery was made at the end of the year, the court emphasized the fact that the taxpayer acquired a present, fixed right to the enjoyment of all the income of the property when the contract was signed and that the parties had specifically agreed the undelivered stock was "intended only as collateral security" that the employee would carry out his obligation. In the instant case the div-

idends were to be held in escrow and delivered to the petitioner only when and if the stock should be delivered to him. Here, also the stock was not held as collateral security for the performance of petitioner's obligation but remained the property of the corporation until "delivery by the artist to the corporation" of the photoplay as agreed.

In H. L. Carnahan, the petitioner, in 1922, had performed services entitling him to receive 5,000 shares of corporate stock. The stock was issued to him and he became entitled to receive all dividends [28] and to exercise all rights as a stockholder; but the certificate was required to be, and was, delivered in escrow pending further order of the "Blue Sky" Commissioner. The certificate was released and delivered to the petitioner in 1924 and the question before the Board was whether he was in receipt of income in the earlier year or in the later year. In holding that income was realized in 1922 it was pointed out that the taxpayer had received the stock in that year, had deposited it in escrow in accordance with the requirements of the state law, and "received all the benefits possible from \* \* \* [it] except the right of actual physical possession and unrestricted power of sale \* \* \*." In the instant proceeding petitioner did not receive such "benefits" from the stock and could not receive them unless and until he complied with his obligation.

It is apparent we must hold, and we do hold, that petitioner became the owner of the 334 shares of

stock in 1935 rather than in 1919. The following cases, in addition to those heretofore cited and discussed, tend to support this view. Martin D. Thomas, 44 B. T. A. 735; Charles F. Mitchell, 45 B. T. A. 300.

Issues (b), (c), and (d) require determination of the treatment to be accorded the accumulated dividends. Respondent contends that if petitioner was not the owner of the shares of stock prior to 1935, then the amount representing dividends declared on the stock prior to that date did not represent dividends to him. The gist of his contention seems to be that the sum paid over to petitioner was merely an additional amount paid for fulfilling the contract. The question is not free from doubt; but we think we are justified in resolving it in favor of petitioner. The amount deposited in escrow represented the portion of the earnings of the corporation allocable to the shares of stock which, under the contract, the parties intended should ultimately belong to petitioner. The contract provided that if and when the stock should be delivered to petitioner by the escrow agent, the corporation would pay to him all dividends which had been deposited in the trust account. This was done. If the amounts deposited in the trust account represented dividends—and they seem clearly to have been distributions by the corporation out of earnings or profits accumulated after February 28, 1913, and hence within the definition of a dividend contained in section 115 of the Revenue Act of 1934—then they did not

lose their character as dividends merely because they were not actually delivered to petitioner in the year declared. The right to receive dividends may be assigned without making the assignee a stockholder, Roscoe H. Aldrich, 3 B. T. A. 911, 919; Anthony Schneider, 3 B. T. A. 920, 926; Matchette v. Helvering, 81 Fed. (2d) 73, though some question may arise as to the taxability of the dividends to the assignor under the rationale of such cases as [29] Helvering v. Horst, 311 U. S. 112, and Helvering v. Eubank, 311 U. S. 122. That question, however, is not before us. Both parties admit that the amount should be included in petitioner's income and the issue is solely whether it constituted dividends, as reported, or ordinary income. Since the amount set aside did not, in our opinion, lose its character as dividends, we think it was properly treated by the petitioner in his return. But if respondent's view be accepted that the amounts set aside in each year were not true dividends, then it would seem that the action of the corporation in the taxable year, making them unconditionally available to petitioner, was tantamount to the declaration and payment by the corporation of a dividend in the aggregate amount of \$44,532.22 upon the 334 shares which petitioner had just received. In either event, we are of the opinion that the amount was "received as dividends from a domestic corporation which is subject to taxation" under Title I of the Revenue Act of 1934 and hence the credit for normal tax, as specified in section 25 (a) of such act, should be allowed.

The deficiency shall be recomputed in accordance with the views herein expressed and

Reviewed by the Board.

Decision will be entered under Rule 50.

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Sternhagen, dissenting: In my opinion, the amount received by petitioner from the escrow agent which was attributable to the accumulated dividends which the escrow agent had received from the corporation was not received by petitioner as dividends and is not the subject of normal tax credit.

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Leech, dissenting: I think the two basic holdings in the majority opinion, expressed in the headnote, are inconsistent with each other and are both wrong. In my judgment, the stock in United Artists Corporation was intended to be and was received by the petitioner in 1919 when it was issued in the name of petitioner and delivered to the escrow agent. It was taxable to petitioner, when so received, as income in the amount of its then fair market value. The stock was held by the escrow agent merely to guarantee performance of petitioner's contract to deliver pictures. The dividends declared and paid on this stock were taxable to petitioner as such when received by the escrow agent. See *Bonham v. Commissioner*, 89 Fed. (2d) 725, affirming 33 B. T. A. 1100. [30]

United States Board of Tax Appeals  
Washington

Docket No. 98795

CHARLES CHAPLIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to findings of fact and opinion herein promulgated February 24, 1942, directing that decision be entered under Rule 50, Respondent on March 20, 1942, filed a proposed computation to which petitioner agreed. It is therefore

Ordered and Decided that there is a deficiency in income tax herein for the year 1935 in the amount of \$63,427.19.

[Seal]

(Signed)

ARTHUR J. MELLOTT

Member.

Enter:

Entered Apr. 6, 1942. [31]

[Title of Circuit Court of Appeals and Cause.]

PETITION FOR A REVIEW OF THE DE-  
CISION OF THE UNITED STATES BOARD  
OF TAX APPEALS

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit.

Now comes Charles Chaplin, by his attorneys,  
Lloyd Wright, Charles E. Millikan and Herschel B.  
Green, and respectfully shows:

I.

JURISDICTION

The petitioner is a resident of Los Angeles County, California, and filed his federal income tax return for the [32] calendar year 1935 with the Collector of Internal Revenue at Los Angeles, California, and within the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit.

The petitioner, in pursuance of Section 1002 of the Revenue Act of 1926, as amended by Section 519 of the Revenue Act of 1934, Sections 1141 and 1142 Internal Revenue Code, seeks a review of the decision of the United States Board of Tax Appeals, promulgated on the 24th day of February, 1942, (46 B.T.A. No. 49) and entered on the 6th day of April, 1942 in the case of Charles Chaplin, Petitioner v. Commissioner of Internal Revenue, Respondent, number 98795 under docket of said Board, wherein said Board determined a deficiency of income tax against petitioner for the calenar year 1935 in the amount of \$63,427.19.

The Respondent is the duly appointed, qualified and acting Commissioner of Internal Revenue, hereinafter referred to as the Commissioner, holding office by virtue of the laws of the United States.

## II.

### NATURE OF CONTROVERSY

The question presented is whether the Respondent erred in including in petitioner's income for 1935 the fair [33] market value of stock issued in the name of Petitioner in 1919 and released from escrow and delivered to him in 1935.

On February 5, 1919 petitioner, Douglas Fairbanks, Mary Pickford, David W. Griffith, all being favorably known in all parts of the world where motion pictures were exhibited agreed to organize a corporation to be known as United Artists Corporation. Each party purchased one thousand shares of preferred stock at One Hundred Dollars (\$100.00) per share and received one thousand shares of common stock in part consideration of the execution and fulfillment of a contract pertaining to the exploiting, marketing and distributing of his or her motion pictures with the said corporation, which contract was also dated February 5, 1919 and executed by the corporation on June 13, 1919. Petitioner's and each other party's one thousand shares of common stock in said corporation were placed in escrow to be held by the escrow holder until each person delivered to the corporation nine photoplays with the proviso that one-ninth of each party's stock would be released for

each photoplay delivered. The Petitioner's contract was later amended to provide for six pictures to be delivered by petitioner in lieu of the nine called for in the original contract and for each picture so delivered by petitioner there would be delivered to him by [34] the escrow holder one-sixth of the stock held in escrow. None of the parties, including petitioner, delivered to the corporation his quota of nine pictures within the period called for in the original contract; there was no extension of the contract and no default declared by the corporation, although it had the right to declare a default and to require the delivery to it of the shares held in escrow as security. The corporation set up in its books as consideration for the issuance of the common stock the artists contracts at a valuation of Twenty-five Thousand Dollars (\$25,000.00). The contracts were approved by the Board of Directors of the corporation. On September 20, 1935, after petitioner had delivered to the corporation four motion picture photoplays, a new distribution agreement was entered into between the corporation and petitioner and at said time there was delivered to petitioner the remaining three hundred thirty-four (334) shares of common stock then held in escrow, together with dividends accumulated thereon and also held in escrow in the sum of \$44,532.22.

During the period of time petitioner's common stock was held in escrow petitioner attended stockholders meetings, voted at such meetings for directors and otherwise, received notices, signed proxies

the same as any other stockholder, [35] participated in the affairs of the corporation, and exercised every incident of ownership in connection with said one thousand shares of common stock. He did not have physical possession of the certificates nor the right to receive dividends declared on the shares in escrow until the shares were released from the escrow. During the time the petitioner's stock was held in escrow the corporation regarded petitioner as the owner of one thousand shares of common stock by entries in its corporate minutes and all other records. Petitioner was recognized as the owner of said shares by the escrow holder as shown by an affidavit of the escrow holder made before any controversy had arisen with reference to such ownership. The shares of stock were placed in escrow as security for the delivery by petitioner of the pictures to United Artists Corporation called for in the distribution agreement.

The petitioner contended that he became the owner of the one thousand shares of common stock in 1919 when the same were issued to him; he later filed a claim for refund of tax paid on the dividends received in 1935 on the theory that the dividends received by him in 1935 were taxable to him in the year declared and paid by the corporation and not in the year received by petitioner. The respondent determined that petitioner became the owner of the 334 shares of common stock [36] in 1935, the year they were released from escrow and delivered to petitioner and that the fair market value of said

shares in 1935, to wit, the sum of \$104,709.00 should be added to petitioner's income for that year.

The Board held that Petitioner became the owner of the stock in 1935 when it was released from escrow by the corporation and delivered to him.

### III.

#### DESIGNATION OF COURT OF REVIEW

The petitioner, being aggrieved by the said findings of fact, opinion, decision and order of the Board, and being a resident of the County of Los Angeles, State of California, and within the Ninth Circuit, desires a review thereof by the United State Circuit Court of Appeals for the Ninth Circuit within which Circuit is located the office of the Collector of Internal Revenue with whom petitioner filed his income tax return for the calendar year 1935 involved herein.

### IV.

#### ASSIGNMENTS OF ERROR

The petitioner avers that in the record and proceedings before the Board of Tax Appeals and in the opinion and final decision rendered and entered by the Board of Tax Appeals manifest error occurred and intervened to the prejudice of [37] the petitioner who now assigns the following errors and each of them which he avers occurred in said record, proceedings, opinion and final decision so rendered and entered by the Board of Tax Appeals.

The Board of Tax Appeals erred:

1. In holding that there is a deficiency of

\$63,427.19 in petitioner's income tax for the year 1935.

2. In holding that petitioner became the owner of 334 shares of common stock of United Artists Corporation in 1935 when said stock was released from escrow and delivered to petitioner.

3. In failing to hold that petitioner became the owner of the 334 shares of common stock when issued to petitioner in 1919.

4. In failing to hold that said one thousand shares of common stock issued to petitioner in 1919 constituted a consideration for the execution by petitioner of the distribution agreement.

5. In failing to hold that the shares of common stock were held by the escrow agent as security for the performance by petitioner of his contract to deliver pictures.

6. In failing to hold that it was the intention of all parties to the original contract that petitioner should become the owner of said shares of common stock when issued in 1919.

7. In failing to hold that the dividends declared and paid on said common stock when held in escrow constituted income to petitioner in the years in which said dividends were paid.

8. In holding that said dividends constituted taxable income to petitioner in 1935.

9. In holding that the fair market value of the 334 shares of common stock, namely, \$104,709.00, constituted taxable income to petitioner in 1935.

10. In holding that petitioner derived income from the release from escrow and delivery to petitioner of the 334 shares of common stock in 1935.

11. In that its decision was not supported by the evidence and is contrary to law.

12. In rendering decision for the respondent and against petitioner. [39]

Wherefore, petitioner respectfully prays that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with law and with the rules of said court and transmitted to the Clerk of said Court for filing and that appropriate action be taken to the end that the record complained of may be reviewed by said court and that said court determine that there is no deficiency due by the petitioner in this proceeding and for such other and further relief as the court may deem meet and proper in the premises.

Respectfully submitted,

(s) LOYD WRIGHT,

111 West Seventh Street,  
Los Angeles, California

CHARLES E. MILLIKAN,  
111 West Seventh Street,  
Los Angeles, California

HERSCHEL B. GREEN,  
111 West Seventh Street,  
Los Angeles, California

Counsel for Petitioner [40]

State of California,  
County of Los Angeles—ss.

Loyd Wright, being first duly sworn, deposes and says:

That he is an attorney authorized to practice before the United States Board of Tax Appeals and the United States Circuit Court of Appeals for the Ninth Circuit, and has his office at 111 West Seventh Street, Los Angeles, California; that he is one of the attorneys of record for the petitioner named in the foregoing petition and is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his knowledge except as to the matters therein alleged on information and belief and as to those matters he believes it to be true.

LOYD WRIGHT

Subscribed and sworn to before me this 1st day of June, 1942.

(Notarial Seal) ANITA GARRETT

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: U. S. B. T. A. Filed Jun. 8, 1942.[41]

In the United States Circuit Court of Appeals  
for the Ninth Circuit

B. T. A. Docket No. 98795

CHARLES CHAPLIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent.

NOTICE OF FILING PETITION FOR  
REVIEW

To: J. P. Wenchel, General Counsel,  
Bureau of Internal Revenue,  
Washington, D. C.

Please take notice that the Petitioner on the 8th day of June, 1942, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a Petition for Review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the Petition for Review and the Assignments of Error as filed is hereto attached and served upon you.

Dated at Los Angeles, California, this 5th day of June, 1942.

Respectfully,

LOYD WRIGHT,

CHARLES E. MILLIKAN,

HERSCHEL B. GREEN,

By LOYD WRIGHT

Counsel for Petitioner

111 West Seventh Street

Los Angeles, California

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 8th day of June, 1942.

J. P. WENCHEL

W

Chief Counsel, Bureau of Internal Revenue.

Counsel for Respondent on Review [42]

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[Title of Circuit Court of Appeals and Cause.]

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now Comes the Commissioner of Internal Revenue, by his attorneys Samuel O. Clark, Jr., Assistant Attorney General, J. P. Wenchel, Chief

Counsel, Bureau of Internal Revenue, and John M. Morawski, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

## I.

### JURISDICTION

The petitioner on review, is the duly appointed, qualified and acting Commissioner of Internal Revenue, (hereinafter referred to as the Commissioner), holding his office by virtue of the laws of the United States.

The respondent on review, Charles Chaplin, (hereinafter referred to as the taxpayer), is an individual with address at 1416 North LaBrea Avenue, Los Angeles, California. The taxpayer filed his Federal income [43] tax return for the calendar year 1935 with the Collector of Internal Revenue for the Sixth District of California, whose office is located at Los Angeles, California, and within the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit.

The Commissioner files this petition pursuant to the provisions of sections 1141 and 1142 of the Internal Revenue Code.

## II.

### PRIOR PROCEEDINGS

On May 2, 1939, the Commissioner determined a deficiency in income tax for the calendar year 1935 in the amount of \$65,208.48, and sent to the taxpayer by registered mail a notice of said deficiency

in accordance with the provisions of existing internal revenue laws. Thereafter, and on May 26, 1939, the taxpayer filed a petition for a redetermination of said deficiency by the United States Board of Tax Appeals.

The case was tried before the Board of Tax Appeals on February 26, 1941, at Los Angeles, California.

On February 24, 1942, the Board promulgated its findings of fact and opinion (46 B.T.A. 385), and on April 6, 1942, entered its decision that there is a deficiency in income tax for the year 1935 in the amount of \$63,427.19.

### III.

#### NATURE OF CONTROVERSY

The question involved is whether the sum of \$44,532.22, which was received by taxpayer in 1935 from the escrow agent, and which was attributable to the accumulated dividends which the escrow agent had received in prior [44] years on escrowed stock which was also released to the taxpayer in 1935, constituted ordinary or dividend income in 1935. If received as ordinary income it is subject to the normal tax; if received as dividend income it is not subject to the normal tax since section 25(a)(1) of the Revenue Act of 1934 allows for the purpose of the normal tax only a credit against the net income for "the amount received as dividends from a domestic corporation which is subject to taxation under this title."

The escrowed stock which was delivered to the taxpayer in 1935 consisted of 334 shares of the common stock of United Artists Corporation. Accumulated dividends on this stock in the sum of \$44,532.22 had been paid to the escrow agent in the years 1930, 1931, 1932 and 1934. This stock and accumulated dividends were released to the taxpayer from escrow in 1935.

The Commissioner determined that the fair market value of the 334 shares of common stock of the United Artists Corporation received by the taxpayer in the taxable year 1935 constituted taxable income to him in that year. In this action the Commissioner was upheld by the Board of Tax Appeals, which held that taxpayer became the owner of the 334 shares of stock in 1935 rather than in 1919.

As to the sum of \$44,532.22, the taxpayer treated it as dividends received in 1935 and not subject to the normal tax. The Commissioner treated this sum as ordinary income and subject to the normal tax in determining the deficiency in tax. The Board, however, reversed the [45] Commissioner and held that the amount of \$44,532.22 was "received as dividends from a domestic corporation which is subject to taxation" under Title I of the Revenue Act of 1934 and hence the credit for normal tax, as specified in section 25(a) of such act, should be allowed.

#### IV.

#### ASSIGNMENTS OF ERROR

The Commissioner avers that in the record and proceeding before the Board of Tax Appeals and

in the opinion and final decision rendered and entered by the Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the Commissioner who now assigns the following errors and each of them, which he avers occurred in said record, proceeding, opinion and final decision so rendered and entered by the Board of Tax Appeals:

The United States Board of Tax Appeals erred:

1. In holding that the sum of \$44,532.22, which was received by taxpayer in 1935 from the escrow agent, and which was attributable to the accumulated dividends which the escrow agent had received in prior years on escrow stock which was also released to the taxpayer in 1935, was "received as dividends from a domestic corporation which is subject to taxation" under Title I of the Revenue Act of 1934 and hence the credit for normal tax, as specified in section 25(a) of such act, should be allowed; and in overruling the Commissioner's determination that this sum constituted ordinary income and was subject to the normal tax. [46]

2. In holding that there is a deficiency in income tax for the year 1935 in the amount of only \$63,427.19.

3. In failing to hold that there is a deficiency in income tax for the year 1935 in the amount of \$65,208.48.

4. In holding that said sum of \$44,532.22 did not lose its character as dividends merely because it

was not delivered to taxpayer in the year declared.

5. In holding that "but if respondent's view be accepted that the amounts set aside in each year were not true dividends, then it would seem that the action of the corporation in the taxable year, making them unconditionally available to petitioner, was tantamount to the declaration and payment by the corporation of a dividend in the aggregate amount of \$44,532.22 upon the 334 shares which petitioner had just received."

6. In failing to hold that the sum of \$44,532.22 received by taxpayer from the escrow agent in 1935 was not received by him as dividends and is not the subject of normal tax credit.

7. In that its opinion and decision are contrary to law.

Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, that a transcript of the record be [47] prepared in accordance with law and with the rules of said Court and transmitted to the

Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed by said Court.

SAMUEL O. CLARK, JR.,

Assistant Attorney General.

(Signed) J. P WENCHEL

RLW

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

JOHN M. MORAWSKI,

Special Attorney,

Bureau of Internal Revenue.

JMM:mgc-6-10-42

[Endorsed]: U.S.B.T.A. Filed Jul. 1, 1942. [48]

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[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To: Charles Chaplin, 1416 North LaBrea Avenue,  
Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did on the 1st day of July, 1942, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of

the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 1st day of July, 1942.

(Signed) J. P. WENCHEL

RLW

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 4 day of July, 1942.

CHARLES CHAPLIN

Respondent on Review.

[Endorsed]: U.S.B.T.A. Filed Jul. 11, 1942. [49]

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[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To: Loyd Wright, Esquire, Herschel B. Green,  
Esquire, 1125 Board of Trade Building, Los  
Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did on the 1st day of July, 1942, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for

review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 1st day of July, 1942.

(Signed) J. P. WENCHEL

RLW

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 3rd day of July, 1942.

LOYD WRIGHT

HERSCHEL B. GREEN

Counsel for Respondent on  
Review.

[Endorsed]: U.S.B.T.A. Filed Jul. 11, 1942. [50]

United States Board of Tax Appeals

Docket No. 98795

CHARLES CHAPLIN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

AGREED STIPULATION OF FACTS

The parties hereto, by their undersigned counsel of record, hereby stipulate and agree that the following facts shall be taken as proof upon the filing of this stipulation, subject to the right of either party to introduce other and further evidence not inconsistent with the terms of this stipulation:

I.

The name of the petitioner is Charles Chaplin; his address is 1416 North LaBrea Street, Los Angeles, California. The taxes in controversy are income taxes for the calendar year 1935. The Commissioner asserted a deficiency of \$65,208.48 against petitioner, whereas the petitioner claims an overpayment of \$24,938.04, making a total of [51] \$90,146.52, all of which is in controversy. Petitioner filed his 1935 income tax return with the Collector of Internal Revenue at Los Angeles, California, on March 16, 1936, showing a total tax to be due of \$224,135.58, which was paid to said Collector on the following dates:

March 16, 1936.....	\$ 56,033.90
June 15, 1936.....	56,033.90
September 12, 1936.....	56,033.89
December 15, 1936.....	56,033.89

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\$224,135.58

On February 8, 1938, a deficiency of \$7487.89 principal and interest assessed against petitioner for 1935 was paid to said Collector according to agreement.

## II.

In 1919, Charles Chaplin, petitioner herein, Douglas Fairbanks, and Mary Pickford, artists, and David W. Griffith, producer, all of whom were favorably known, and their respective names having exceptional trade value in all parts of the world where motion pictures were exploited and exhibited, agreed to associate themselves together in the distribution of the motion pictures thereafter produced by them.

## III.

Thereupon, said individuals referred to in paragraph II above, on February 5, 1919, entered into a memorandum of agreement, a copy of which may be received in evidence as [52] petitioner's Exhibit I, which said agreement provided for the formation of United Artists Corporation, the capital stock of which consisted of two classes: (a) 6,000 shares of 8% accumulative preferred stock, par value \$100.00 per share; and (b) 9,000 shares of common stock, no par value.

## IV.

Thereafter, on April 17, 1919, the certificate of incorporation of United Artists Corporation was filed with the Secretary of State of the State of Delaware rather than the State of New York as provided in Exhibit I referred to in paragraph III above, a true copy of said certificate of incorporation may be received in evidence as petitioner's Exhibit II, and a true copy of the bylaws of said corporation may be received in evidence as petitioner's Exhibit III.

## V.

On June 9, 1919, there was issued in the name of petitioner 1,000 shares of the common stock of United Artists Corporation evidenced by certificates Nos. 19, 20, 21, 22, 23, 24, 25, and 26, for 111 shares each, and certificate #27 for 112 shares, photostatic copies of which may be received in evidence as petitioner's Exhibit IV.

## VI.

On February 5, 1919, Charles Chaplin signed a proposed distribution agreement with United Artists [53] Corporation, which said agreement was subsequently executed by United Artists Corporation on June 13, 1919, a copy of which may be received in evidence as petitioner's Exhibit V. Said agreement provides for the producing of nine feature photoplays by the said Charles Chaplin within three years from the date thereof.

## VII.

On July 5, 1919, Charles Chaplin, petitioner herein, Douglas Fairbanks, David W. Griffith, and Mary Pickford entered into an agreement with United Artists Corporation amending subdivision (i) of paragraph 3 of each of those certain four contracts dated February 5, 1919, between each of said individuals and said United Artists Corporation, a copy of said agreement may be received in evidence as petitioner's Exhibit VI. Said agreements of July 5, 1919, provided for the issuance of said 1,000 shares of common stock in the names of said individuals in the form of nine certificates, eight of which were to be each in the sum of 111 shares, and one of which was to be for 112 shares, and upon the delivery by each of said individuals of the first eight photoplays called for under his contract, such escrow agent was to deliver to the said individual one of said certificates for 111 shares for each photoplay delivered, and upon the delivery by the said individual of the ninth photoplay called for, said escrow agent was to deliver to said individual said certificate for 112 shares. [54]

## VIII.

On August 5, 1919, United Artists Corporation, Charles Chaplin, and Dennis F. O'Brien entered into an escrow agreement wherein it was provided that there should be deposited with the said Dennis F. O'Brien, as escrow holder, the certificates of

stock evidencing 1,000 shares of common stock of United Artists Corporation issued in the name of Charles Chaplin, and more particularly described in paragraph V hereof. A copy of said agreement may be received in evidence as petitioner's Exhibit VII.

### IX.

On November 22, 1942, Charles Chaplin, petitioner herein, Mary Pickford Fairbanks, Douglas Fairbanks, Joseph M. Schenck, and United Artists Corporation, entered into an agreement, a true copy of which may be received in evidence as petitioner's Exhibit VIII. Said agreement modifies the distribution agreement between Charles Chaplin and United Artists Corporation dated February 5, 1919 by providing that Charles Chaplin shall be obligated to deliver to the corporation for distribution only five additional motion picture photoplays described in the original contract instead of the eight undelivered pictures provided for in said contract. Said agreement further provides that the balance of the common stock of the corporation held in escrow for the benefit of Charles Chaplin shall be delivered to him in the proportion [55] of one-fifth thereof upon the delivery of each motion picture photoplay by Charles Chaplin to United Artists Corporation. Said agreement further provides that Charles Chaplin shall deliver to said corporation one motion picture photoplay per year commencing at the date thereof.

## X.

On October 31, 1928, Charles Chaplin delivered to United Artists Corporation a certificate for 111 shares of common stock of said corporation which was released from escrow to him upon the delivery to said corporation of the motion picture photoplay *A Woman of Paris*, and at said time the 889 shares still held in escrow by Dennis F. O'Brien were delivered to United Artists Corporation for cancellation. Said certificates of stock were cancelled, and on said date there was issued by said corporation in the name of said Charles Chaplin the following certificates of common stock: #83 for 166 shares; #84 for 167 shares; #85 for 166 shares; #86 for 167 shares; #87 for 167 shares; and #88 for 167 shares, a total of 1,000 shares. Photostatic copies of the aforesaid certificates of stock may be received in evidence as petitioner's Exhibit IX. All of the foregoing certificates were placed in escrow with Dennis F. O'Brien pursuant to the agreement dated February 5, 1919. Thereafter on November 8, 1928, there was released from said escrow and delivered to Charles Chaplin certificates #83 for 166 shares; #84 for 167 shares, and #85 for 166 shares of said common stock. [56]

## XI.

On February 27, 1931, certificate #86 for 167 shares of no par common stock of United Artists Corporation was released from escrow and delivered to Charles Chaplin upon completion of the picture

City Lights pursuant to the terms of the agreement dated February 5, 1919 as amended on November 22, 1924.

## XII.

On September 20, 1935, an agreement was entered into between United Artists Corporation and Charles Chaplin, a copy of which may be received in evidence as petitioner's Exhibit X, under which there was released to the said Charles Chaplin from escrow certificates #87 and #88 each for 167 shares of the common stock of United Artists Corporation, with accumulated dividends thereon in the sum of \$44,532.22, which was the balance of the common stock held in escrow for the said Charles Chaplin.

## XIII.

The accumulated dividends on the 334 shares of stock evidenced by certificates #87 and #88, referred to in paragraph XII, were paid to the escrow agent in the following years: [57]

1930.....	\$ 6,680.00
1931.....	3,340.00
1932.....	3,340.00
1934.....	31,172.22
	<hr/>
	\$44,532.22

(s) LOYD WRIGHT

(s) HERSCHEL B. GREEN

Counsel for Petitioner

(s) J. P. WENCHEL

BH

Counsel for Respondent [58]

[Title of Board and Cause.]

United States Post Office and Court House,  
Los Angeles, California

February 26, 1941.

10:00 o'Clock a. m.

Before: Hon. Arthur J. Mellott.

Met pursuant to notice.

### APPEARANCES:

Hershel B. Green and Loyd Wright, 1125  
Board of Trade Building, Los Angeles,  
California, and J. R. White, 530 West 6th  
Street, Los Angeles, California, appearing  
for Charles Chaplin, the Petitioner.

Byron M. Coon and Frank T. Horner, appear-  
ing for the Commissioner of Internal Rev-  
enue, Respondent. [60]

### PROCEEDINGS

The Clerk: 98795, Charles Chaplin. State your  
appearances, please.

Mr. Green: Loyd Wright and Hershel B. Green  
and J. R. White, for the Petitioner.

Mr. Horner: Frank T. Horner for the Respond-  
ent, and Mr. B. M. Coon.

The Court: State your case for the Petitioner.

Mr. Green: If the Court please, we have a par-  
tial agreed stipulation of facts that I would like  
to introduce at this time.

The Court: It may be handed to the Clerk and  
will be filed as part of the record.

Mr. Green: In conformity with the stipulation, if the Court please, I have here a number of exhibits that I would like to offer in evidence at this time.

The Court: Very well. Identify them briefly for the record, and the Clerk will give them a number.

Mr. Green: The first is a memorandum of agreement dated February 5, 1919 entered into between Charles Chaplin, who is the Petitioner herein, Douglas Fairbanks, David W. Griffith, and Gladys Mary Moore, which we would like to offer as Petitioner's Exhibit 1.

Mr. Horner: No objection.

The Court: There being no objection, the document will [61] be received as Petitioner's Exhibit No. 1.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 1, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 1

Memorandum of Agreement, made and entered into in four copies, each copy to be considered for all purposes as an original, on this 5th day of February, 1919, by and between Charles Chaplin, hereinafter designated as Mr. Chaplin party of the first part, and Douglas Fairbanks, hereinafter designated as Mr. Fairbanks, party of the second part, and

## Petitioner's Exhibit No. 1 (Continued)

David W. Griffith, hereinafter designated as Mr. Griffith, party of the third part, and Gladys Mary Moore, professionally known as Mary Pickford, hereinafter designated as Miss Pickford, party of the fourth part; all of the above persons being now present in the City of Los Angeles and the County of Los Angeles, State of California,

## WITNESSETH:

Whereas, all of the above named persons are well and favorably known and their respective names have exceptional trade value in all parts of the world where motion pictures in which they have respectively been identified, have been exploited and exhibited, and

Whereas, they have heretofore acted together because of a threatened combination of motion picture stars and producers being formed which, in their opinion, would tend to force upon the theatre-going public, mediocre productions and machine made entertainment and would defeat competition in the motion picture industry; and

Whereas, they desire, in furtherance of the artistic welfare of the moving picture industry and to better serve the great and growing interest in motion picture productions, to become associated in the distribution of the motion pictures produced by them as more fully hereinafter set forth for exhibition purposes.

Now, Therefore, in consideration of the premises

## Petitioner's Exhibit No. 1 (Continued)

and of the mutual promises and covenants herein set forth and the further consideration of the sum of One (\$1.00) Dollar each to all the others in hand paid, the receipt of which is hereby individually and respectively acknowledged by all of the parties hereto, each and all of the parties hereto agree with each other and all the others as follows:

## FIRST:

All of the above named persons do hereby agree and by these presents have agreed to become associated with each other and with all the others in the exploiting, marketing, distributing and turning to account the motion pictures produced by them as more particularly hereinafter described, pursuant to the terms, conditions and provisions herein set forth:

The above named persons agree to organize or cause to be organized a corporation pursuant to the laws of the State of New York, the details of such corporation to be as follows:

(1) The name of said corporation shall be United Artists Corporation.

(2) The capital stock of said corporation shall consist of two classes:

(Class A) Eight percent accumulative preferred stock in the amount of six thousand (6,000) shares, the subscription price of which is to be One Hundred (\$100.00) Dollars per share, or such other price as the Board of Directors of said corporation may from time to time determine, the same to

## Petitioner's Exhibit No. 1 (Continued)

be non-voting stock and to be subject to the right of redemption upon call by the Board of Directors in whole or in part at 105% of par. It is contemplated that one-third the preferred stock shall be redeemed at the end of each year from the earnings of the corporation and that in case the earnings are not sufficient to redeem such one-third in any year the deficiency shall be made up in the next subsequent year, but that not more than one-third plus such deficiency shall be redeemed in any year.

(Class B) Common stock in the amount of nine thousand (9,000) shares of no par value to be issued and paid for in the following manner:

One thousand (1,000) shares to each of the above named persons in part consideration of the execution and fulfillment of the contract pertaining to the exploiting, marketing, distributing and turning to account of his or her motion pictures with the said corporation. The details concerning the delivery of the aforesaid common shares of stock to each of the aforesaid persons shall be more fully set forth in the agreement between said person and said corporation pertaining to the exploiting, marketing, distributing and turning to account the motion pictures produced by such person and included in such contract.

One thousand (1,000) shares to William G. McAdoo who is to become the General Counsel of said corporation.

All of the aforesaid common stock shall be issued subject to the right of the said corporation for its

## Petitioner's Exhibit No. 1 (Continued)

then existing stockholders to purchase the same in the event of such stockholder desiring to sell any portion or all of his or her shares of common stock in said corporation to any person who is now actively associated with such stockholder in the business of producing photoplays, and each certificate of common stock shall have written or printed on its face a notice of such prior rights of repurchase. Conditions governing such right or repurchase shall be fully set forth in the by-laws of the said corporation and a copy of the same shall be attached to each certificate of common stock of said corporation.

Voting: The owner of the said common stock shall be entitled to one vote for each share of stock owned by him or her and the election of the members of the Board of Directors of said corporation shall be accumulative voting meaning and intending that the owners of the common stock may cast the number of votes that he or she is entitled to by virtue of the number of shares of stock he or she may own, multiplied by the number of directors to be elected at the given election in which the stockholders are then voting, for one Director if he or she so elect; or the owners of such common stock may cast the votes that he or she may be entitled to for the election of such persons as he or she may desire as Director.

Directors: The Board of Directors of said corporation shall be five; it being the intention of the parties hereto that each of said parties have the

## Petitioner's Exhibit No. 1 (Continued)

privilege of being represented by one Director on such Board of Directors. The number of Board of Directors may be increased or diminished in pursuance of the laws governing same.

The duration of the corporation shall be perpetual.

The purposes for which the corporation shall be organized shall be the motion picture business and business incidental thereto and such other business as the Board of Directors may from time to time determine.

It is understood that the plan outlined in this agreement will be translated into legal form by Mr. McAdoo as general counsel for the corporation, in such manner as he may determine to be legally advisable and that the parties will, under his guidance, take such steps in the formation of the corporation, and will execute such supplementary contracts and documents for the purpose of effectuating his agreement, as he may deem advisable.

## SECOND

## FINANCING OF THE CORPORATION

Each of the parties hereto agree with each other and all the others, and with said corporation and for the benefit of said corporation, to subscribe and by these presents has subscribed, for the purchase of One Thousand (1,000) Shares of said preferred stock of the corporation for the sum of One Hundred (\$100.00) Dollars per share, totaling One Hun-

## Petitioner's Exhibit No. 1 (Continued)

dred Thousand (\$100,000.00) Dollars, to be paid for when called by written notice to that effect by said Mr. McAdoo; each call not to exceed twenty (20%) per cent of said subscription and such calls to be at least thirty (30) days apart. Such subscriptions are to be paid to said Mr. McAdoo as trustee prior to the incorporation of said corporation, thereafter to the treasurer of the corporation.

Upon the payment of each subscription the subscriber who has so paid his subscription, shall be entitled to receive the number of shares of said preferred stock that he will have paid for, such certificates of such stock to be delivered to the subscriber after the corporation has been organized.

The parties hereto agree that the above subscriptions shall inure to and be for the benefit of said corporation as fully as if said corporation were now legally organized and such subscription were legally made directly with said corporation; and for the purpose of completing and carrying out the aforesaid subscription, each of the parties hereto does hereby designate and by these presents has designated the said Mr. McAdoo as his attorney in fact, for him and for her individually and severally, with full power and authority to transfer, set over and assign his or her above subscription for the purchase of said preferred stock of said corporation to said corporation as soon as organized, hereby confirming and ratifying the acts of said Mr. McAdoo in the making of such assignment.

## Petitioner's Exhibit No. 1 (Continued)

## THIRD

CONTRACT FOR DISTRIBUTION OF  
MOTION PICTURES

Each of the parties hereto agrees with each other and with all the others and with the said corporation when organized, and for the benefit of said corporation and for the benefit of all the parties hereto, to execute and deliver a contract with said corporation for the sole and exclusive license to market, exploit, distribute and turn to account the motion pictures that each shall produce for and during the period specified in such contract between said corporation and each of said parties to this contract, and for the particular motion pictures described in said contract, and pursuant to all the terms, conditions and provisions set forth in such contract, and for that purpose each of the parties hereto does execute and deliver contemporaneously with the execution and delivery of this agreement, the aforesaid so-termed Distribution Contract with said corporation fully executed on the part of such person to said Mr. McAdoo, and does hereby direct and empower said Mr. McAdoo to procure forthwith upon the organization of said corporation the execution of said contract in duplicate by said corporation and to deliver one of each of said duplicate originals of said contract to each of the parties to said contract, hereby ratifying and confirming the act of said Mr. McAdoo in so doing. All of the parties hereto do hereby agree to cause the

## Petitioner's Exhibit No. 1 (Continued)

Board of Directors of said corporation to authorize the proper officials of said corporation to execute the aforesaid Distribution Contracts in behalf of said corporation with each of the parties hereto.

## FOURTH

## RESPONSIBILITY OF PERSONS

The parties hereto do hereby agree and by these presents have agreed that this agreement does not, and is not intended to constitute a copartnership between them, but is to serve as the basis upon which their business relations incident to the enterprise herein described are predicated; and the organization of the corporation and the execution and delivery of the Distribution Contracts and the fulfillment of the terms and provisions of this agreement, shall supersede this contract, and nothing contained herein shall abridge the powers of the Board of Directors of said corporation or control its deliberative action. Should any conflict arise between the provisions of this agreement and any subsequent or superseding agreements, the language in the subsequent or superseding agreements shall control. The parties hereto agree that this instrument shall be construed and enforced pursuant to the laws of the State of New York.

The parties hereto agree that in the event that Mr. McAdoo refuses or fails to act in the capacity herein designated, that all of the power and authority granted to him by each of the parties here-

## Petitioner's Exhibit No. 1 (Continued)

to are granted to such other person as may be selected in writing by a majority of the parties hereto, such person to have the same power and authority as hereinbefore provided for the said Mr. McAdoo.

This contract is binding upon the parties hereto, their respective heirs, legal representatives and assigns.

In Witness Whereof, the parties hereto have hereunto subscribed their names and affixed their seals the day and year first above written.

In the presence of:

CHARLES CHAPLIN (L.S.)

DOUGLAS FAIRBANKS (L.S.)

D. W. GRIFFITH (L.S.)

GLADYS MARY MOORE (L.S.)

Known as Mary Pickford

State of California,  
County of Los Angeles—ss.

On this 5th day of February, 1919, before me, Arthur Wright, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Charles Chaplin, known to me to be the person whose name is subscribed to the within agreement, and acknowledged to me that he executed the same.

Witness my hand and official seal.

ARTHUR WRIGHT

Notary Public in and for said County of Los Angeles, State of California.

Petitioner's Exhibit No. 1 (Continued)

State of California,  
County of Los Angeles—ss.

On this 5th day of February, 1919, before me, Arthur Wright, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Douglas Fairbanks, known to me to be the person whose name is subscribed to the within agreement, and acknowledged to me that he executed the same.

Witness my hand and official seal.

ARTHUR WRIGHT,

Notary Public in and for said County of Los Angeles, State of California.

State of California,  
County of Los Angeles—ss.

On this 5th day of February, 1919, before me, Arthur Wright, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared David W. Griffith, known to me to be the person whose name is subscribed to the within agreement, and acknowledged to me that he executed the same.

Witness my hand and official seal.

ARTHUR WRIGHT

Notary Public in and for said County of Los Angeles, State of California.

Petitioner's Exhibit No. 1 (Continued)  
State of California,  
County of Los Angeles—ss.

On this 5th day of February, 1919, before me, Arthur Wright, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Gladys Mary Moore, professionally known as Mary Pickford, known to me to be the person whose name is subscribed to the within agreement, and acknowledged to me that she executed the same.

Witness my hand and official seal.

ARTHUR WRIGHT,  
Notary Public in and for said County of Los Angeles, State of California.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The second is a conformed copy of the certificate of incorporation of United Artists Corporation, which I would like to offer as Petitioner's Exhibit 2.

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 2, and made a part of this record.)

PETITIONER'S EXHIBIT No. 2

CERTIFICATE OF INCORPORATION OF  
UNITED ARTISTS CORPORATION

First: The name of the corporation is United Artists Corporation.

Second: The location of its principal office in the State of Delaware is No. 7 West 10th Street, in the City of Wilmington, County of New Castle. The name of the agent therein and in charge thereof is the Corporation Trust Company of America, No. 7 West 10th Street, Wilmington, Delaware.

Third: The nature of the business or objects or purposes proposed to be transacted, promoted or carried on are:

(a) To acquire, produce, create, sell, lease, market or dispose of pictures, plays and photoplays, and any and all rights and interests therein or in regard thereto and all other articles connected therewith or incidental thereto.

(b) To improve the photoplay industry and its artistic standards, and the methods of marketing photoplays.

(c) To market photoplays in the interest of the artists who create them.

(d) To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares, merchandise, interests, rights, patent rights, copyrights, and real and personal property of every class and description.

(e) To acquire the good-will, rights and property, and to take over the whole or any part of the assets and liabilities, of any person, firm, association or corporation and to pay for the same in cash, stocks or bonds of this corporation, or otherwise.

(f) To enter into, make, perform and carry out contracts of every kind, for any lawful purpose, without limits as to amount, with any person, firm, association or corporation.

(g) To have one or more offices, to carry on all or any of its operations and business without restriction or limit as to amount to purchase, or otherwise, acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, in accordance with the law thereof.

(h) In general, to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and to exercise all the powers conferred by the laws of Delaware and upon corporations formed under the act hereinafter referred to.

Fourth: The total number of shares authorized to be issued by the corporation is fourteen thousand. Out of the total number of shares, five thousand shall be preferred shares. The preferred shares shall have a par value of one hundred dollars each.

The holders of the preferred shares shall be entitled to receive annual dividends at the rate of

eight per cent. per annum and no more out of the surplus profits of the corporation quarter-yearly, payable on the first days of February, May, August and November in each year. Such dividends shall be cumulative and all accrued dividends and arrears of dividend on the preferred shares shall be paid before any dividends shall be paid or set apart for the common shares.

The whole, or for the purposes of any sinking fund provided herein and in the by-laws any part, of the preferred shares may, at the option of the Board of Directors, be redeemed on any quarterly dividend payment date, by paying therefor in cash, at the time fixed for such redemption, one hundred and five dollars (\$105) per share and all accumulated unpaid and accrued dividends thereon, on such notice and in such manner as may be provided in the by-laws. In case preferred shares called for redemption are not duly presented for redemption, they shall cease to be entitled to share in further or later dividends.

On or before the first day of May, 1920, and on or before the first day of May in each year thereafter, until all of the preferred shares shall have been redeemed, there shall be set apart out of the remaining surplus profits of the corporation after all accumulated and defaulted dividends upon the preferred shares shall have been paid, or set apart and provided for an amount equal to (1) one-third of the total par value of all the then outstanding preferred shares of the corporation, plus (2) five per cent. of such total par value.

The amount thus ascertained shall on each May first then be paid and credited to a sinking fund.

The moneys in the sinking fund on each May first shall be used and applied in redemption of preferred shares, on or before the next following August first.

Whenever, for the purpose of the sinking fund, less than the whole amount of the preferred shares then outstanding is to be redeemed, the particular shares to be redeemed shall be ascertained in such manner as the by-laws shall prescribe. Such redemption shall be equal among all the shareholders, excepting that in calling the preferred shares for redemption, no resultant fractions of shares shall be called for redemption.

Any deficiency in the amount required to be set apart in any year to the credit of the sinking fund, as provided in this article, shall in the next succeeding year be added to the sinking fund out of the surplus profits of this corporation.

In no event shall any dividends be declared or paid on the common shares until (1) the current quarterly dividend on the preferred shares as well as all accumulated and accrued dividends thereon shall have been paid and set apart; and (2) all arrears, if any, in respect to any amounts hereinbefore required to have been set apart and credited to the sinking fund shall have been made good.

Subject to the foregoing provisions such dividends as may be determined by the Board of Directors may be declared and paid on the common

shares of the corporation from time to time out of the outstanding surplus profits of the corporation.

In the event of insolvency or merger or consolidation of the corporation, or voluntary or involuntary dissolution, or bankruptcy or liquidation of the corporation, or sale of all its assets, there shall be paid to the holders of the preferred shares then outstanding, one hundred dollars (\$100.) per share and all accumulated unpaid and accrued dividends thereon, before any sums shall be paid to or any assets distributed among the holders of the common shares; and after such payments to the holders of the preferred shares all remaining assets or funds of the corporation shall be divided among and paid to the holders of the common shares according to their respective holdings.

The preferred shares shall have no voting rights.

At all elections of directors of the Corporation each holder of shares (as to which he is entitled to vote as herein stated) shall be entitled to as many votes as shall equal the number of his shares multiplied by the number of directors to be elected; he may cast all of such votes for a single director or may distribute them among the number to be voted for or any two or more of them, as he may see fit. This right when exercised shall be termed cumulative voting.

No shareholder or holder of obligations of the corporation convertible into shares shall be entitled as of right to subscribe for, acquire or receive any

part of any further additional issue of shares or obligations of the corporation convertible into shares but such further issue may be disposed of by the Board of Directors to such persons and on such terms and (so far as permitted by law) for such consideration as the Board in their absolute discretion may deem advisable.

The Board of Directors may at the time of original issue of any shares of the corporation prescribe such limitations of transferability of such shares or any of them as in their discretion they may deem advisable; provided that such limitations conform to the by-laws of the corporation and that the certificate evidencing the ownership of such shares bear upon its face reference to such limitation of transferability.

The Corporation may at any meeting of its Board of Directors sell, lease or exchange all of its property and assets, including its good-will and its corporate franchises, upon such terms and conditions as its Board of Directors deem expedient and for the best interests of the Corporation, but only when and as authorized by the affirmative vote of the holders of three-fourths of the shares issued and outstanding having voting powers given at a shareholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of three-fourths of the voting shares issued and outstanding.

In addition to the preferred shares above described, the number of shares authorized to be

issued by the corporation is nine thousand, all of which additional shares shall be common shares without par value.

Fifth: The number of shares with which this corporation will commence business is ten preferred shares, and ten common shares of no par value.

Sixth: The names and places of residence of the original subscribers to the capital stock and the number of shares subscribed for by each are as follows:

Name	Residence	Number of Shares	
		Pref.	Common
T. L. Croteau	Wilmington, Del. ....	8	8
P. B. Drew,	Wilmington, Del. ....	1	1
M. M. Clancy,	Wilmington, Del. ....	1	1

Seventh: This corporation is to have perpetual existence.

Eighth: The private property of the shareholders shall not be subject to the payment of corporate debts to any extent whatever.

Ninth: In furtherance and not in limitation of the powers conferred by statute, the board of directors are expressly authorized:

To fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens upon any real and personal property of this corporation.

The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on shareholders herein are granted subject to this reservation.

We, the Undersigned, being each of the original subscribers to the capital stock hereinbefore named, for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of an Act of the Legislature of the State of Delaware entitled "An Act Providing a General Corporation Law" (approved March 10th, 1899), and the acts amendatory thereof and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals this 17th day of April, A. D., 1919.

In the presence of:

HERBERT E. LETTER

T. L. CROTEAU (Seal)

P. B. DREW (Seal)

M. M. CLANCY (Seal)

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

Mr. Green: No. 3 is a conformed copy of the bylaws of the United Artists Corporation, which we would like to offer as Petitioner's Exhibit No. 3.

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 3, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 3

(Copy)

BY-LAWS  
OF  
UNITED ARTISTS CORPORATION

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ARTICLE I.

Seal.

The Board of Directors (herein sometimes called the Board) shall provide a suitable seal for the corporation which shall remain in the custody of the Secretary. It shall be affixed to all certificates of the shares and to other instruments requiring a seal. A duplicate seal may be kept and, when authorized by the Board, used by any other officer of the corporation.

ARTICLE II.

Shares.

Section 1. Certificates. Certificates evidencing the ownership of the preferred and common shares

## Petitioner's Exhibit No. 3 (Continued)

of the corporation of such tenor and design as the Board may from time to time adopt shall be issued to those entitled to them. Each certificate for preferred shares and each certificate for common shares shall bear a distinguishing number, the signature of the President or Vice-President and of the Secretary or of the Treasurer, the seal of the corporation and such recitals as may be required by law. The certificates for the preferred and common shares shall be issued respectively in numerical order and a full record of the issue of each certificate shall be made in the books.

Section 2. Transfers. The shares may be transferred on the books of the corporation by the registered holders thereof or by their attorneys legally constituted or their legal representatives by surrender of the certificates therefor for cancellation and a written assignment of the shares evidenced thereby. The Board may from time to time appoint such Transfer Agents or Registrars of shares as it may deem advisable and may define their powers and duties.

Section 3. Lost Certificates. The Board may order a new certificate or certificates of shares to *be issued in place of any certificate or certificates of shares* to be issued in place of any certificate or certificates alleged to have been lost or destroyed, but in every such case the owner of the lost certificate or certificates may be required to give the corporation a bond, with surety or sureties satisfactory to the corporation, in such sum as the Board

## Petitioner's Exhibit No. 3 (Continued)

may deem sufficient, as indemnity against loss or liability; but the Board may in its discretion refuse to issue such new certificates save upon the order of some court having jurisdiction in such matters.

Section 4. Closing of Transfer Books. The share transfer books of the corporation may be closed by order of the Board for a period not exceeding ten days prior to any meeting of the shareholders, and for a period not exceeding ten days prior to the payment of any dividend. The times during which the books may be so closed shall from time to time be fixed by the Board.

Section 5. Dividends. The Board may declare dividends from the surplus or net profits arising from the business of the Corporation. Dividends may be declared, subject to the provisions of the Certificate of Incorporation, upon the preferred shares and upon the common shares of the Corporation, in the months of January, April, July and October in each year, prior to the fifteenth day of said months respectively, at any annual, regular or special meeting of the Board, or on the days to which any such meetings may be adjourned, at which times the Board, in its discretion, subject to the provisions of the Certificate of Incorporation, shall determine what, if any, dividends shall be declared. Dividends on the preferred and common shares, if declared, severally and respectively, shall be payable on the first days of February, May, August and November next after the several

## Petitioner's Exhibit No. 3 (Continued)

dates of the declaration thereof, and shall be payable to the stockholders of record at the close of business on the fifteenth of the month in which they shall have been declared. If any date herein appointed for the payment of any dividend, or herein fixed for determining the shareholders of record, to whom the same is payable, shall, in any year, fall upon a Sunday or legal holiday, then such dividend shall be payable, or such shareholders of record shall be determined, on the next succeeding day not a Sunday or legal holiday.

## ARTICLE III.

## Shareholders' Meetings.

Section 1. Annual meeting. The annual meeting of the shareholders of the corporation shall, beginning with the year 1920, be held in each year at the principal business office of the corporation, which may be established outside of the State of Delaware (or at such other place within or without the State of Delaware as the Board may determine) at 3 o'clock in the afternoon on the first Monday in April (or if said day be a legal holiday, then on the next succeeding day not a holiday), for the purpose of electing Directors and Officers and for the transaction of such other business as may be brought before the meeting.

Section 2. Special Meetings. Special meetings of the shareholders must be called by the Secretary upon written request of the President or of any

## Petitioner's Exhibit No. 3 (Continued)

director. No business other than that specified in the call therefor shall be considered at any special meeting. Special meetings shall be held at the principal business office of the corporation outside the State of Delaware unless the Board shall name another place therefor.

Section 3. Notice. Notice of the annual meeting shall, at least ten days prior to the date thereof, be mailed to each shareholder of shares entitled to voting rights at his last known post-office address as the same appears on the records of the Corporation.

Notice of each special meeting stating the purpose thereof shall be mailed at least ten days prior to the date thereof to each shareholder at his last known post-office address as the same appears on the records of the corporation.

Section 4. Quorum. A majority in amount of the shares authorized by the Certificate of Incorporation to vote, issued and outstanding represented by the holders of record thereof in person or by proxy shall be requisite to constitute a quorum at any meeting of shareholders; but less than such majority may adjourn the meeting from time to time, and at any such adjourned meeting any business may be transacted which might have been transacted if the meeting had been held as originally called.

Section 5. Proxies. Any shareholder entitled to a vote at a meeting of the shareholders may be represented and vote thereat by proxy, appointed

## Petitioner's Exhibit No. 3 (Continued)

by an instrument in writing subscribed by such shareholder or by his duly authorized attorney and submitted to the Secretary at or before such meeting.

Section 6. Election of Directors. The election of Directors may be conducted by two inspectors of election appointed after the first election by the President or a Vice-President. The vote in elections of Directors and, upon demand of a shareholder present in person or by proxy, the vote on any question shall be by share vote and by ballot.

Section 7. Order of Business. At all meetings of the shareholders the order of business shall be as follows:

(a) Call to order.

(b) Election of a Chairman and the appointment of a Secretary, if necessary.

(c) Presentation of proofs of the due calling of the meeting—the certificate of the Secretary or affidavit of other person who mailed the notice shall be conclusive of service.

(d) Presentation and examination of proxies.

(e) Reading and settlement of the minutes of the previous meeting.

(f) Reports of officers and committees.

(g) If the annual meeting, or a meeting called for that purpose, the election of Directors and Officers.

(h) Unfinished business.

(i) New Business.

(j) Adjournment.

## Petitioner's Exhibit No. 3 (Continued)

## ARTICLE IV.

## Directors.

Section 1. Terms of Office. The directors of the corporation shall hold office until the annual meeting of the shareholders succeeding their appointment or election, and thereafter until their respective successors shall have been duly elected and qualified.

Section 2. Powers. All the powers of the corporation are vested in and shall be exercised by the Board except as otherwise prescribed by statute, or by the certificate of incorporation or by these by-laws.

Section 3. Vacancies. A resignation from the Board of Directors shall be deemed to take effect upon its receipt by the Secretary unless some other time is specified therein. In case of any vacancy in the Board, through death, resignation, disqualification or other cause deemed sufficient by the Board, the remaining Directors, by affirmative vote of a majority of those present at any duly convened meeting, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant and until the election and qualification of a successor. Should the membership of the Board at any time become below the number necessary to constitute a quorum, then a special meeting of the shareholders shall be called forthwith and so many directors be elected thereat as may be necessary to bring the Board to its full membership.

## Petitioner's Exhibit No. 3 (Continued)

Section 4. Election of Officers. At the first meeting of the Board in each year (at which a quorum shall be present) held next after the annual meeting of the shareholders, the Board shall appoint such officers and employes, not chosen by the shareholders, as it shall determine (provided that the shareholders may, if they deem it expedient, themselves elect or remove any or all officers and employes at any general or special meeting).

Section 5. Regular Meetings. Regular meetings of the Board shall be held on such dates as the Board may designate.

Section 6. Special Meetings. Special meetings of the Board of Directors shall be called by the Secretary and held at the request of the President or of any Director.

Section 7. Notice of Meetings. The Secretary shall give notice of each meeting of the Board whether regular or special to each member of the Board by mail or telegraph to his last known post-office address. Such notice shall be given by mailing the same two days before the meeting or by telegram sent one day before the meeting.

Section 8. Quorum. A majority of the Board shall constitute a quorum at all meetings thereof.

Section 9. Place of Meeting. The Board may hold its meetings at such place or places within or without the State of Delaware as the Board may from time to time determine.

## Petitioner's Exhibit No. 3 (Continued)

Section 10. Compensation. Directors, as such, shall not receive any stated salary for their services, but, by resolution of the Board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting; provided, that nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity and receiving compensation or commissions therefor. Members of either standing or special committees may be allowed such compensation as the Board may determine.

Section 11. Inspection of Books. The Board shall, subject to the Certificate of Incorporation and to the law of the State of Delaware, determine the conditions and regulations under which the books and accounts of the corporation or any of them shall be opened to the inspection of shareholders.

Section 12. Offices and Books Outside State. The Board may from time to time establish corporate offices and agencies and keep the books of the corporation at such place or places outside the State of Delaware as they may from time to time designate.

## ARTICLE V.

## Officers.

Section 1. Officers. The officers of the corporation shall be a president, a vice-president, a treasurer and a secretary, who shall be elected by share-

## Petitioner's Exhibit No. 3 (Continued)

holders (but if said officers are not elected by the shareholders, then they shall be elected by the Board) to serve for one year and until their respective successors are elected and qualified. The president shall be a member of the Board. Additional vice-presidents may be elected from time to time for such terms as determined by the Board which may also appoint one or more assistant secretaries and one or more assistant treasurers, a general manager and such subordinate officers and agents of the corporation as it may from time to time determine.

Section 2. President. The President shall preside at all meetings of the shareholders, unless the shareholders shall appoint a Chairman (who may be the President) and the President shall also preside at all meetings of the Board. He shall exercise, subject to the control of the Board, a general supervision over the affairs of the corporation, and shall perform such other duties as may be assigned to him from time to time by the Board.

Section 3. General Manager. The General Manager shall perform such duties as may be assigned to him by the Board.

Section 4. Vice-President. The Vice-President or Vice-Presidents shall perform the duties of the President in his absence or during his inability to act. The Vice-Presidents shall also have such other and further powers and shall perform such other and further duties as may be assigned to them by the Board.

## Petitioner's Exhibit No. 3 (Continued)

Section 5. Treasurer. The Treasurer shall have the custody of the funds and securities of the corporation which may come into his hands. When necessary or proper, he may endorse on behalf of the corporation, for collection, checks, notes and other obligations. He shall deposit the funds of the corporation to its credit in such hands and depositaries as the Board may from time to time designate. He shall submit to the annual meeting of shareholders a statement of the financial condition of the corporation, and whenever thereunto required by the Board, shall make and render a statement of his accounts and such other statement as may be required. He shall keep in books of the corporation full and accurate account of all moneys received and paid by him for account of the corporation. He shall perform such other duties as may be from time to time assigned to him by the Board. The Treasurer shall give bond for the faithful performance of his duties. Such bond check shall be in the sum of \$50,000, executed by a surety company approved by the Board.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board, and of the shareholders, unless another person be appointed for that purpose by the shareholders, in books, provided for that purpose. He shall give or cause to be given all notices required by these By-Laws or by resolution of the Board. He shall have charge of the share certificate book, share

## Petitioner's Exhibit No. 3 (Continued)

transfer books and share ledgers, all of which shall at all reasonable hours be open to the examination of any Director; he shall have custody of the seal of the corporation; and he shall in general perform all the duties usually incident to the office of secretary, subject to the control of the Board.

Section 7. Assistant Officers. The Assistant Secretary or Secretaries and the Assistant Treasurer or Treasurers shall perform the duties of the Secretary and of the Treasurer, respectively, in the absence of those officers and shall have such further powers and perform such other duties as may be assigned to them respectively by the Board.

Section 8. Removal. Any person elected to office by the Board may be removed at any time upon vote of the majority of Directors in office at any meeting specially called for the consideration of such removal.

## ARTICLE VI.

## Signatures.

Section 1. Negotiable Instruments. All checks, drafts, notes or other obligations of the corporation shall be signed by the following officers, to wit: President or Vice-President and Treasurer, or by any person or persons thereunto authorized by the Board.

Section 2. Share Transfers. All endorsements, assignments, transfers, powers or other instruments of transfer of securities standing in the name of the corporation by any two of the following officers,

## Petitioner's Exhibit No. 3 (Continued)

to wit: The President or a Vice-President, the Treasurer, and the Secretary; or by any person or persons thereunto authorized by the Board.

## ARTICLE VII.

## Redemption and Transferability of Shares.

Whenever for the purposes of the sinking fund described in the certificate of incorporation less than the whole amount of the preferred shares is to be redeemed, the particular shares to be redeemed shall be ascertained as follows: Forthwith, after the setting apart of moneys for the sinking fund on any May first, the Secretary shall determine the number of preferred shares which the funds then in the sinking fund shall be sufficient to redeem at the rate stated in the certificate of incorporation for such redemption. This number shall be divided by him equally among all the holders of certificates of preferred shares outstanding at such May first in proportion to the number of shares respectively represented by all such certificates in the name of each such holder, but if such division would result in any fractions of shares being allotted to any such holder, such fractions of shares shall be disregarded and not called for redemption, and the moneys which would have been available for that purpose shall be left in the sinking fund and held for the redemption of shares by the sinking fund in the ensuing year.

The notice for and manner of redemption of

## Petitioner's Exhibit No. 3 (Continued)

preferred shares of the corporation shall be as follows:

Such notice must be in writing addressed to and, unless personally delivered, sent by United States mail to the respective holders of record of preferred shares to be redeemed at the respective addresses which they may have filed for such purpose with the Secretary of the corporation. If a shareholder file no address the notice to such shareholder shall be mailed to him addressed Los Angeles, California. The notice must be mailed (or personally delivered) at least thirty days prior to the date therein designated for such redemption. The notice of redemption shall state that on the redemption date designated, on surrender of the certificates representing the preferred shares called for redemption, duly endorsed in blank for transfer at such office in the United States as the corporation may designate, the holder and owner thereof will receive the redemption price described in this certificate. In case the preferred shares thus called for redemption are not thus duly presented for redemption, they shall, as stated in the certificate of incorporation, cease to share in further or later dividends.

The directors of the corporation may limit the transferability of common shares in the manner hereinafter described, but each certificate evidencing the ownership of such shares shall bear upon its face reference to this article of the by-laws or

## Petitioner's Exhibit No. 3 (Continued)

a copy of the following provisions of this article.

In case a holder of a certificate representing common shares of the Corporation shall at any time desire to sell or give away any share or shares represented by such certificate to any person other than a person at the time actively associated with such shareholder in the business of producing photo-plays, he shall give notice in writing to the president at the principal business office of the Corporation describing the share or shares he desires to dispose of, the name of the party to whom such transfers are intended, the consideration (which must be stated in cash) to be received by such shareholder from such transferee, and shall at the same time deposit with the president at such office such certificate for shares duly endorsed in blank and stamped for transfer. The desired transfer of common shares shall not be made upon the books of the Corporation unless

(a) such transfer be by operation of law, or

(b) the transferee shall be a person associated in business with such shareholder as aforesaid, or

(c) twenty days have elapsed since the filing of such written notice and deposit of such share certificate, and no other shareholder of the Corporation shall have, in the manner hereinafter stated, given notice to the president that such other shareholder desires to acquire

## Petitioner's Exhibit No. 3 (Continued)

such shares as to which notice of desire to transfer has been given.

Whenever any such notice of desire to transfer shall be filed with the President, he shall within two days after the receipt thereof cause a copy thereof to be sent by mail addressed to each person who is then a shareholder upon the books of the Corporation at his address as it appears upon such books. If thereafter and before the twenty days above mentioned shall have expired any such other shareholder desires to acquire such shares **for the same** cash consideration as shall be named in such notice of desire to transfer, he shall file a notice to that effect with the president at such office within such twenty day period accompanied by certified check for such cash consideration payable to or to the order of the president. If the president shall receive only one such notice from such other shareholder, he shall forthwith transfer the share certificates so desired into the name of such other shareholder and contemporaneously therewith pay to the shareholder giving notice of desire to transfer the amount of such consideration. If two or more shareholders shall both desire to acquire such shares, the president shall equally apportion such shares among such shareholders but if any such division would result in any fraction of shares being allotted to any such holder, the president shall determine by lot in such manner as he may deem reasonable and with

## Petitioner's Exhibit No. 3 (Continued)

such formalities as he may deem wise which of such shareholders shall obtain such odd shares and shall return to the shareholders the difference between the amount deposited by them and the consideration for such shares as they are entitled to by the foregoing method of allotment.

## ARTICLE VIII.

## Amendments.

These by-laws may be altered, amended or repealed at any regular meeting of the shareholders or at any special meeting thereof duly called for that purpose, by a three-fourths vote of the shares represented and entitled to vote thereat; provided, that in the call for such special meeting, notice of such purpose shall be given. Subject to the law of the State of Delaware, the Certificate of Incorporation and these by-laws, the Board of Directors may, by unanimous vote of all present at any meeting at which a quorum is present, amend these by-laws or enact such other by-laws as in their judgment may be advisable for the regulation of the conduct of the affairs of the corporation, provided that no amendment shall be made in respect to Article VII hereof, except at a shareholders meeting.

## ARTICLE IX.

## Waiver of Notice.

Whenever, under the provisions of these by-laws or of any law, the shareholders or directors, or

## Petitioner's Exhibit No. 3 (Continued)

any of the officers are authorized to hold any meeting or take any action after notice, or after the lapse of any prescribed period of time, such meeting or action may be held or taken without notice, or without such lapse of time on written waiver of such notice signed by every person entitled to notice.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: Next are photostatic copies of stock certificates representing shares of common stock of United Artists Corporation evidenced by certificates Nos. 19 to 27, inclusive. Each of these certificates is issued in the name of Charles Chaplin and each is dated June 9, 1919. [62]

The Court: How many altogether are there?

Mr. Green: Nine, your Honor.

The Court: The nine may be fastened together by the Clerk and may constitute one exhibit. Any objection?

Mr. Horner: No objection.

The Court: It may be received.

Mr. Horner: Exhibit 4.

(The said documents, so offered and received in evidence, were marked Petitioner's Exhibit 4, and made a part of this record.)

PETITIONER'S EXHIBIT No. 4

Consists of nine Common Stock Certificates, numbered from 19 to 27, inclusive, one of which is set out as follows:

Incorporated under the Laws of the State of  
Delaware

No. 19

111 Shares

UNITED ARTISTS CORPORATION

Total Authorized Shares

8% cumulative preferred shares 5000 shares of the  
par value of \$100.00 each. Common shares  
9000 shares of no par value.  
(Common)

This is to certify that Charles Chaplin is the owner of One Hundred and Eleven common shares of no par value of United Artists Corporation on the books of the Corporation transferable in person or by duly authorized attorney only upon surrender of this certificate duly endorsed and subject to the restrictions and limitations of transferability herein stated. For a statement of the rights, privileges and preferences and voting powers and the restrictions and qualifications of the preferred and common shares of the Corporation and of the provision for redemption of the preferred shares and the sinking fund therefor reference is made to the Certificate of Incorporation and the By-Laws of the Corporation.

The Board of Directors of the United Artists Corporation on April 24, 1919, drafted a resolution as follows:

“Resolved, That in accordance with the provisions of the Certificate of Incorporation of the Corporation and particularly the Fourth Article thereof and the portion of such Article dealing with transferability of common shares and in conformity with the By-Laws of the Corporation and particularly the Seventh Article of such By-Laws this Board prescribes the following limitation of transferability as to all common shares of the Corporation authorized, to wit, 9,000 shares; the right of holders of certificates representing such shares or any of them shall be limited in the manner provided in Article Seven of the By-Laws in case any holder of any such certificate representing any of such shares shall at any time desire to sell or give away any share or shares represented by such certificate to any person other than a person at the time actively associated with such share holder in the business of producing photo-plays. This limitation of transferability shall apply not only to each certificate for any of such 9,000 shares originally authorized when issued but to all other certificates for shares thereafter at any time issued against the transfer of such shares.”

Reference is made to such provisions of the Certificate of Incorporation and the By-Laws for a full statement of the limitation of transferability.

In Witness Whereof the Corporation has caused its corporate seal to be hereto affixed and this certi-

ificate to be signed by its duly authorized officers  
this 9th day of June, 1919.

OSCAR A. PRICE,

President

G. B. CLIFTON,

Secretary

F. A. BEACH,

Asst. Secretary

Cancelled Oct. 31, 1928.

[Printer's Note—The printed form on the reverse  
side of each stock certificate is not filled out, there-  
fore is omitted.]

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: As Petitioner's Exhibit 5 I would  
like to offer in evidence a memorandum of agree-  
ment dated February 5, 1919, between Charles  
Chaplin and United Artists Corporation.

Mr. Horner: No objection.

The Court: It will be received as Petitioner's  
Exhibit No. 5.

(The said document, so offered and received  
in evidence, was marked Petitioner's Exhibit 5,  
and made a part of this record.)

## PETITIONER'S EXHIBIT No. 5

Memorandum of Agreement, made in duplicate, (each copy to be considered for all purposes as an original), and entered into this fifth day of February, A. D. 1919, by and between Charles Chaplin, now residing in the City of Los Angeles, County of Los Angeles, State of California, hereinafter designated as "artist", party of the first part, and United Artists Corporation, a corporation organized pursuant to the laws of the State of New York and having its principal place of business in the City of New York, hereinafter designated as "corporation", party of the second part,

Witnesseth:

Whereas, Charles Chaplin is well and favorably known to the theatre-going public because of his extraordinary ability as an actor and photoplay artist and the name of Charles Chaplin has been extensively advertised throughout the United States of America and other parts of the world where motion picture attractions in which said pictures have appeared or have been produced under the supervision or direction of said artist have been exhibited, and the trade name and good will of said artist are of great value; and

Whereas, said corporation is desirous of inducing said artist to produce a series of so-termed Special Feature Photoplays for and during the period of this agreement, and of granting to said corporation the exclusive right, license and privilege of exploiting, marketing and turning to account and to exhibit, distribute or cause to be ex-

## Petitioner's Exhibit No. 5—(Continued)

hibited and distributed said photoplays for the period of time and pursuant to the terms, conditions and provisions herein set forth; and

Whereas, said artist is desirous of making a series of Special Feature Photoplays during the period of time herein provided and of granting unto the corporation the exclusive right, license and privilege to exploit, market, turn to account, exhibit, distribute and cause to be exhibited and distributed the aforesaid series of photoplays, to be known as "Charles Chaplin Series of Photoplays", in the United States of America, Alaska, Newfoundland, and the Dominion of Canada, for the period and in the manner, and upon the terms and pursuant to the conditions and provisions hereinafter particularly set forth:

Now, Therefore, in consideration of the premises, and the mutual promises and covenants herein contained, and for the further consideration of the sum of One (\$1.00) Dollar each to the other in hand paid, the receipt whereof is hereby acknowledged, and of other artists mentioned in an agreement of even date herewith, executing and delivering that contract with said artist,

It Is Agreed by and between the parties hereto as follows:

## First:

## Production of Pictures

(a) Said artist agrees to provide at his own expense (including all taxes imposed upon or affecting

## Petitioner's Exhibit No. 5—(Continued)

the negatives and positive prints of each of such photoplays), the corporation with a series of at least three (3) special feature motion picture photoplays in which said artist personally agrees to portray the leading character or role, such photoplays to be known as "Charles Chaplin Series of Photoplays", per year beginning upon the termination of the present contract between the artist and the First National Exhibitors Circuit, Inc., but in no event later than the first day of September, 1920, (the date of the delivery of said first photoplay to be determined by said artist, who shall give a written notice of such date to said corporation of at least four weeks prior to such date), for and during the period of the next ensuing three (3) years, totaling at least nine (9) such feature photoplays within such period, to consist of two (2) negatives of each photoplay, provided the making of two (2) negatives be permitted by the governmental authorities, (otherwise, one negative so long as such governmental restriction exists) and a sufficient number of complete positive copies to satisfy the demand for the use of said photoplay by the exhibitors, not to exceed One Hundred (100) Copies, cut and conformed to the sample print before said delivery and ready for projection purposes, as each photoplay is to be exhibited in the United States of America, such photoplays to be of the same high class as to photography, acting and direction as the photoplays said artist has appeared in during the past two (2) years, and to unfold an entertaining story

## Petitioner's Exhibit No. 5—(Continued)

and to consist of between sixteen hundred (1600) and three thousand (3,000) lineal feet, the leading role in each of such photoplays to be portrayed by said artist; and one negative and the positive copies are to be delivered by said artist in the following manner: By notifying in writing, by registered mail or telegram, said corporation at its New York office at least two (2) weeks in advance of the date when said artist is prepared to deliver the aforesaid copies of each photoplay. Whereupon said corporation shall provide said artist with written directions where to send, at the expense of said corporation, the aforesaid copies of the aforesaid photoplays, and said artist shall agree to promptly comply with said directions.

(b) Said artist agrees to deliver while said artist is making each of such photoplays, or at the time of delivery of the negative or positive copies of each of such photoplays, such still plates made by such artist for such photoplay as the term is understood in the motion picture business, and in the judgment of said artist are desirable for advertising purposes of such photoplays, and such still plates may be used by said corporation in reproducing photographs for publicity and advertising purposes, and are to be returned to said artist in the same manner and subject to the same conditions as cover and affect the negatives and positive copies of such photoplays, as in this contract provided.

The aforesaid delivery of each of such aforesaid

## Petitioner's Exhibit No. 5—(Continued)

photoplays and still plates is conditioned upon the payments and provisions herein set forth.

(c) The title of the negative and positive copies and still plates delivered to or procured by the corporation pursuant to this contract, for the purposes of this contract, shall remain in said artist, subject to the rights of the corporation as set forth in this agreement, and each negative and positive copy of each photoplay and the still plates, or so many as are then in existence, shall be returned to said artist by the corporation five (5) years from the date of release for exhibition purposes of the positive copies of each of such photoplays in the United States of America, at the last address provided said corporation by said artist, or such other place as the artist may direct in writing to the corporation at least thirty (30) days prior to the expiration of said five (5) year period.

(d) All other rights in and to the literary composition of each of said photoplays, and in and to the said photoplays themselves, except such rights as are specifically granted to said corporation by said artist pursuant to this agreement are reserved and withheld by said artist.

## Second:

## License to Make Motion Picture Copies

(a) Said artist does hereby grant, and by these presents has granted unto the corporation, the right to make, or cause to be made, such additional posi-

## Petitioner's Exhibit No. 5—(Continued)

tive copies of each of such photoplays as in the judgment of said corporation may be necessary, to properly market and turn to account each of the aforesaid photoplays in all the territory hereinbefore described during said respective five (5) year periods, in no event to exceed fifty (50) such copies of such photoplays, except with the written consent of said artist first had and obtained; subject, however, to the artist's prior right to make or cause to be made such additional positive copies of each photoplay. The corporation shall inform said artist of the number of such additional positive copies of each photoplay so made and in use. The cost of such additional copies is to be paid from the earnings derived from the use of such positive copies prior to the earnings derived from the use of such positive copies being divided between the parties hereto; as hereinafter provided. And does further grant and by these presents has granted to said corporation the exclusive right and privilege to market and turn to account, exhibit, distribute or cause to be distributed or exhibited, said photoplays including all positive copies in all the territory hereinbefore described for and during said respective five (5) year periods.

(b) All replacements of the positive copies, or parts of the same shall be paid for from the earnings derived from such positive copies, or parts of same which have been so replaced by the corporation prior to the receipts derived from such *positive being* distributed hereto as hereinafter provided.

## Petitioner's Exhibit No. 5—(Continued)

## Third:

## Advertising

(a) The name of Charles Chaplin shall receive "chief prominence", (and by "chief prominence" is meant that his name shall be in larger letters than, and at least twice the size of, any other part of the subject matter in which his name appears), in all advertising and literature used in connection with the exploitation of said photoplays by said corporation, and that the name of no other person shall appear in connection with the advertising and exploiting of each of said photoplays except as directed by said artist, except the name of the corporation and the name of the theatre in which the photoplays will be exhibited. All such advertising and literature shall be submitted to the artist or his duly constituted agent, at, and who shall have, a place at or in the Borough of Manhattan, City of New York, for his written approval, such approval not to be unreasonably withheld or delayed. In the event of such approval, or refusal to approve, not being given within three days of the date of delivery of such advertising or literature at such office, then the corporation may use the advertising and literary material so submitted or other advertising and literary matter substantially similar.

(b) The corporation shall supply exhibitors with first class lithographs in one or more colors with each photoplay at a reasonable price, in such quan-

## Petitioner's Exhibit No. 5—(Continued)

tities as may be required by the exhibitor, the general character of the aforesaid lithographs to be submitted to the artist or his duly constituted agent, at, and who shall have, a place at or in the Borough of Manhattan, City of New York, for his written approval, such approval not to be unreasonably withheld or delayed. In the event of such approval, or refusal to approve, not being given within three (3) days of date of delivery at such office, then the corporation may use the lithographs so submitted or others substantially similar. Such lithographs shall be supplied to the exhibitor by the corporation at cost, plus a reasonable percentage of profit. The artist reserves the right to designate the person or corporation who is to manufacture such lithographs, subject, however, to his exercising his said right by notifying the corporation, at the time of or prior to the delivery of the negative and positive copies of the photoplay for which the lithographs are to be made.

(c) The press matter provided and circulated by the corporation relative to such photoplays, shall be submitted to the artist or his duly appointed agent at, and who shall have, a place of business in the Borough of Manhattan, in the City of New York, for his written approval, such approval not to be unreasonably withheld or delayed. In the event of such approval or refusal to approve, not being given within three (3) days from the date of delivery of the same at such office, then the corpora-

## Petitioner's Exhibit No. 5—(Continued)

tion may use the material so submitted or material substantially similar.

(d) It is distinctly understood and agreed that after the photoplay is delivered to the corporation, no changes, interpolations, modifications, additions, or eliminations of any kind shall be made in any photoplay or any part thereof (this includes title and subtitles), except such changes as the corporation may be forced to make by a duly constituted Board of Censors, and each photoplay shall always be exhibited in the same order, arrangement, sequence and manner as when delivered to the corporation by the artist. The corporation shall not permit the exhibition of any photoplay delivered hereunder by any theatre owner or exhibitor except in the way and manner in this paragraph provided for, and all releasing contracts of the corporation shall be so drawn as to protect the artist in this particular, and in such contracts it shall be provided that the photoplay shall only be exhibited in the order, arrangement, sequence and manner as was the negative of such photoplay when it was completed and delivered by the artist to the corporation. The corporation hereby guarantees that it will, at its own expense, enforce these said provisions of its releasing contracts with other exhibitors.

(e) It is agreed by the parties hereto, that the motion pictures and photoplays of the artist enjoy universal popularity in the so-termed "Motion Picture World", and to maintain the same it is essential that the aforesaid series of photoplays be ex-

## Petitioner's Exhibit No. 5—(Continued)

hibited in the largest number of motion picture theatres obtainable, and to be marketed in a fair manner and free from unfair methods in business; hence—the corporation agrees that all leases or licenses to use positive copies of such of said photoplays shall be made separate and apart from the leases or sales of other motion pictures or photoplays, and used in no way to influence the license, lease or sale of other motion pictures or photoplays, and the right, license or privilege to exhibit such motion pictures or photoplays shall not be denied any person or persons, firm or corporation exhibiting motion pictures or photoplays who is willing to pay a proper rental consideration for such a license or privilege, except in such theatres which would be in direct competition with the theatres for which contracts have already been made to exhibit such photoplays, or such theatres which do not regularly exhibit so-termed first class feature photoplays or do not represent first class theatrical entertainment, and subject also to the right of the corporation to grant reasonable territorial and time privileges in connection with the exhibition of the photoplays in question in favor of the theatre or theatres selected by the corporation to exhibit the photoplays in the immediate locality in question, as against any other theatre or theatres in the same locality.

(f) Said corporation agrees to use its best efforts to market the aforesaid photoplays upon a basis of the sharing in the gross receipts derived from the

Petitioner's Exhibit No. 5—(Continued)  
exhibition of each of such photoplays in the particular theatre in question in cities where the photoplays of such artist had been heretofore exhibited for periods of a week or more and for as long a period in such theatres as the patronage of said theatre will reasonably warrant, consistent with the proper financial returns to said corporation and to said distributor.

(g) The artist reserves the right to designate a representative or representatives at his own expense, in any or all of the various offices of said corporation for the purpose of approving of the various contracts pertaining to the exhibition of such photoplays. No contract disapproved by such agent shall be made by the corporation unless approved by the artist.

(h) No agreement of franchise or territorial right for the use of any such photoplay shall be made or entered into by said corporation without written consent of said artist or his agent first had and obtained.

(i) And in addition to the above consideration, one thousand (1,000) shares of the common stock of the said corporation to be delivered in escrow to a person or corporation to be agreed upon by the parties hereto and to be held by said person until said artist delivers to said corporation, nine (9) photoplays. Should said artist be unable to deliver nine (9) such photoplays because of illness or incapacity during the said entire period of three

## Petitioner's Exhibit No. 5—(Continued)

(3) years, said artist shall receive so many of the aforesaid one thousand (1,000) shares of the common stock of this corporation as the number of photoplays delivered by said artist to this corporation pursuant to this agreement bears to the number of nine. The balance of the shares of such common stock shall be delivered by such escrow agent to this corporation.

## Fourth:

(a) All moneys derived from the license to use each of the aforesaid photoplays for exhibition purposes shall be divided and belong to the parties hereto as follows: In the United States, Eighty (80%) per cent to said artist and twenty (20%) per cent to said corporation; in the Dominion of Canada, Newfoundland and Alaska, seventy (70%) per cent to said artist and thirty (30%) per cent to said corporation. The aforesaid consideration shall include all receipts of every kind and character derived from the use of said photoplays by said corporation or by the artist through the corporation, except from the sale of lithographs. The aforesaid consideration belonging to said artist shall be paid or be caused to be paid by the corporation within three (3) weeks from the end of each week for which the consideration has been derived from the use of such photoplays, except as to the consideration derived from the use of such photoplays outside of the United States of America, which shall be paid monthly; all payments shall

## Petitioner's Exhibit No. 5—(Continued)

be accompanied with true and accurate statements showing the details of each rental including the name of the theatre, the dates when exhibited, and the rental or consideration paid for the use of the same.

(b) The duties and governmental taxes that apply to the importation or circulation of each of such photoplays shall be deducted from the gross receipts of such photoplays prior to receipts from such photoplays being divided between the parties hereto, but said corporation shall use its best efforts to procure the payment of such taxes by the persons or corporations exhibiting the same, if the same be lawful so to do.

## Fifth:

## Illness Affecting the Number of Photoplays

(a) Should the artist, because of illness or injury to him or for any cause beyond his control be unable to or fail to complete and deliver any of the minimum number of said series of photoplays to said corporation, providing said corporation will have complied with all of the material promises and obligations in this agreement on its part to be kept and performed, the number of such photoplays that said artist agrees to deliver to said corporation pursuant to this agreement shall be reduced in the proportion that the number of weeks of such illness bears to the total period of three (3) years.

(b) Should said artist be permanently disabled

## Petitioner's Exhibit No. 5—(Continued)

or disfigured, so as to prevent his producing the character of photoplays covered by this agreement, this contract shall thereupon terminate and end except as to photoplays already completed. Said artist shall be thereupon relieved from further compliance with this agreement.

(c) Said artist agrees that in the event of the corporation violating any of the promises, covenants, and obligations of the corporation to be kept and performed pursuant to this agreement, that the corporation will have thirty (30) days in which to rectify such violation and comply with this contract after receiving notice to that effect by registered letter sent by said artist or his representative to the principal office of the corporation located in New York City, and to Douglas Fairbanks, David W. Griffith and Mary Pickford, or so many of them as are then producing motion pictures which are being distributed by the corporation, addressed to their respective business offices in either the City of New York or the City of Los Angeles, California; and until after the expiration of said thirty (30) days, the corporation shall not be deemed to be in fault.

## Sixth:

(a) The corporation does hereby purchase and acquire, and by these presents has purchased and acquired from said artist, the exclusive right, license and privilege to market, turn to account, to exhibit, distribute or cause to be exhibited or dis-

## Petitioner's Exhibit No. 5—(Continued)

tributed for exhibition purposes, the aforesaid series of at least three (3) photoplays per year, for and during the aforesaid period of five (5) full years, to be produced by said artist, and in each of which said artist agrees to portray the leading character as more fully described hereinbefore, pursuant to all the terms, conditions and provisions on the part of the corporation to be kept and performed as in this contract set forth.

(b) The corporation agrees to provide, where reasonably feasible, through ownership or contract relation and for the term hereof throughout such portions of the world, which are included in this agreement, where motion pictures of said artist are now being exhibited, exchanges or other method of distribution of sufficient number to reasonably satisfy the demand of such photoplays, in all of the respective division of said territory, and to offer said photoplays for exhibition purposes for so much of the aforesaid periods of this contract, as applies to said territory, as there may be a demand for the use and exhibition of such photoplays in said territory.

(c) The corporation agrees that the release date for exhibition purposes in the United States of America and the Dominion of Canada, shall be the respective dates designated by said artist, which dates shall be at least forty (40) days from, and within one hundred and twenty (120) days of, the

## Petitioner's Exhibit No. 5—(Continued)

date of delivery of the negatives and positive copies of each of the aforesaid photoplays by the artist to the corporation, as herein provided. Such photoplays shall be offered for exhibition purposes in the United States of America, and the Dominion of Canada, from that date during the entire period of the license of such photoplays or so long as there is a reasonable demand for the same, and in other territory covered by this agreement, as the same can be reasonably marketed, and as long as the demand for the use of said photoplays in such territory warrants.

(d) The parties hereto agree that any waiver by said artist or the corporation of any breach of any kind or character whatsoever by the other, whether such waiver be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this contract on the part of the other, and particularly as regards the making and delivery of the statements and of the keeping of the accounts, and of the delivery of the photoplays herein provided.

(e) The corporation agrees to keep true and accurate books of accounts in which shall be entered all details of every kind and character pertaining to the business of this enterprise, and all contracts pertaining to the marketing and exhibiting of said photoplays from the various theatres in which they are exhibited, which shall be open to the inspection of said artist or his representative or accountant at all reasonable times.

## Petitioner's Exhibit No. 5—(Continued)

## Seventh:

(a) Said corporation and said artist agree that this contract is personal in respect to each of the parties hereto, and that neither can assign the same nor permit the same to be transferred by involuntary act, by operation of law or otherwise, without a written consent of the other first had and obtained; nothing herein contained, however, shall prevent the artist from assigning this contract after said artist shall have completed and delivered to the corporation the photoplays herein provided, subject, however, to the artist remaining liable as principal upon said contract.

(b) The corporation, however, consents that this agreement may be assigned by the artist to a corporation or copartnership, provided such assignment shall be evidenced by an instrument in writing duly executed under seal and acknowledged by the assignee, and be delivered to the corporation, wherein and whereby such assignee shall accept and assume all the terms and covenants of this agreement, to be kept and performed by the said artist and become personally bound to comply therewith. The consent to such proposed assignment shall not release said artist from any of the terms, covenants, and conditions in this agreement contained; and in the event of such assignment, said artist agrees to personally direct the production of each photoplay and to personally portray and represent the star and leading role in each photoplay, and to continue

## Petitioner's Exhibit No. 5—(Continued)

liable as principal jointly and severally with such corporation or copartnership as to all the terms and covenants hereof and for any default in the faithful performance of this agreement by such assignee and himself or either of them.

## Eighth:

(a) The corporation agrees that the artist may produce and deliver the aforesaid photoplays at such times as to him may seem desirable, provided the negative and positive copies of the first of aforesaid photoplays be delivered to said corporation on or before the first day of September, 1920, and the remainder not less than two (2) nor more than six (6) months from the date of the delivery of the last previous photoplay, and provided that at least three (3) of such photoplays shall be delivered during each year of the aforesaid period, except as otherwise herein provided.

(b) Said artist agrees that the services said artist shall render pursuant to which the corporation shall benefit, under the provisions of this agreement, are special, unique, and extraordinary and the same cannot be replaced, and because of such and for the consideration paid and to be paid said artist pursuant to this agreement, said artist agrees not to render any services either as producer of motion pictures where his name may be used in any manner pertaining to the marketing, exhibiting and turning to account such motion picture, or as an

## Petitioner's Exhibit No. 5—(Continued)

actor in the production of said motion picture to or for any person, persons, firm or corporation, relative to the making of motion pictures or photoplays from the period beginning from the time he will have commenced to produce his first photoplay covered by this agreement, which shall be not later than the first day of September, 1920, and continuing for three (3) full years from that date, or until this contract is legally terminated. It is agreed that said artist may supervise and be or become interested in, other motion picture productions than those covered by this agreement, provided; and that an injunction shall issue to restrain manner in connection with such motion pictures, and provided such do not prevent said artist from making at least three (3) motion pictures per year to be marketed by said corporation as herein provided; and that an injunction shall issue to restrain the artist from any violation of this agreement on his part, such injunction being necessary to protect and preserve the rights of the corporation and to prevent irreparable damage. Nothing herein contained shall prevent the said artist from using his name in the exploiting and turning to account of the motion pictures produced prior to his beginning to produce motion pictures to be marketed and turned to account by said corporation pursuant to the provisions of this agreement.

(c) The corporation agrees that said artist may produce, if said artist so elect, not more than one

## Petitioner's Exhibit No. 5—(Continued)

so-termed unusual or special motion picture per year of at least three thousand (3,000) lineal feet in length, and such motion picture shall not be included or covered by this agreement, provided the production of such motion picture does not prevent said artist from producing at least three (3) of such series of photoplays as is herein provided; and such unusual or special motion picture shall not be released for exhibition purposes until said artist shall have delivered the minimum number of his photoplays to said corporation for and during the year in question.

And, provided further, that in releasing or exhibiting each such unusual or special motion picture, the artist shall provide by his releasing or exhibiting contracts that the admission to be charged by any exhibitor shall be at least fifty (50%) per cent more than the usual and customary prices of admission in that particular motion picture theatre in which the photoplay is being exhibited. Such unusual or special motion picture may be exhibited in any legitimate theatre by the artist without increase in prices above the customary prices of such legitimate theatre.

## Ninth:

(a) The corporation agrees to properly care for the negatives in fire-proof vaults, and still plates of the aforesaid series of photoplays, except at such times as it is necessary to have them removed for the purpose of making prints of the same, and

## Petitioner's Exhibit No. 5—(Continued)

to return such negatives and all positive copies and still plates then in existence, upon the expiration of the respective period of the license of each of such photoplays, or the sooner termination of this contract, to said artist, the negatives to be in the same condition as when delivered, subject to reasonable wear and tear occasioned by usage. Should said corporation be unable to return any of the negatives or positive prints or still plates because of loss through their own destruction, or because of any act beyond the control of said corporation or its employees, it shall provide in lieu thereof reasonable satisfactory proof of such loss or destruction to said artist.

## Tenth:

## Infringements.

(a) Said artist agrees to indemnify and hold harmless the corporation on account of and against any claims, demands or suits which may be made or brought by third parties, questioning the right, license and privilege of said corporation, its exchanges, members and licensees to use such photoplays in the full exercise of the rights hereto granted or purported to be granted to the corporation by said artist, and said artist agree to join in and conduct the defense of any such claim or litigation.

(b) The corporation agrees to promptly begin and prosecute all actions necessary to enjoin and prosecute any unlawful use of said photoplays or

## Petitioner's Exhibit No. 5—(Continued)

the infringement of the copyright thereof within the territory covered by this agreement.

## Eleventh:

Said artist does hereby constitute and empower the corporation as attorney in fact to procure, and said corporation does agree to procure copyrights in said countries of North America where copyrights are procurable of each of said photoplays, in the name of said artist, at the expense of the corporation.

## Twelfth:

## Censorship Clause.

(a) Should any legally constituted Board of Censors in the United States of America or Canada, having power and authority to prevent the circulation or distribution of photoplays, condemn or prohibit the exhibition of any such photoplay, or require the excision of any substantial portion of any such photoplay, the artist agrees to replace or rearrange that portion of said photoplay so condemned, with reasonable promptness if same be practicable and desirable, the opinion of said artist to be final in said matter.

## Thirteenth:

Said artist, in consideration of the corporation's entering into and executing this agreement, and as an inducing cause of Douglas Fairbanks, David W. Griffith, and Mary Pickford's executing and

## Petitioner's Exhibit No. 5—(Continued)

delivering contracts substantially similar to this contract, between each of them respectively and this corporation, agrees with them and with this corporation that he will not directly or indirectly dispose of any right, title or interest of his in and to the license or privilege to exhibit or cause to be exhibited any of his aforesaid photoplays covered by this agreement in parts of the world other than included in this agreement, prior to December 1, 1919, it being the intention of the parties in this paragraph mentioned to withhold such license and privilege relative to their respective photoplays covered by this agreement, until the said corporation shall have had an opportunity to investigate and determine the best method for the parties hereto concerned to market, exploit, and turn to account the aforesaid photoplays in other parts of the world and to procure sufficient reliable information that will enable all of the parties mentioned in this paragraph to determine an equitable basis and the best method for the marketing and turning to account of their respective photoplays in other parts of the world.

## Fourteenth:

The parties hereto agree that this agreement shall be construed as in no sense a copartnership between the parties hereto, and that either shall have no authority to bind the other as his representative in any way, shape or form except as specifically provided in this agreement for the pur-

Petitioner's Exhibit No. 5—(Continued)

pose of marketing, exploiting and turning to account the aforesaid photoplays in the particular territory covered by this agreement.

Fifteenth:

This contract is binding upon the parties hereto, their respective heirs, legal representatives and assigns, except as hereinbefore provided.

This contract cannot be amended except with the written consent of said Griffith, Fairbanks and Miss Pickford.

This contract shall be construed and enforced pursuant to the laws of the State of New York.

In Witness Whereof, the parties to this agreement have executed the same the day and year first above written.

CHARLES CHAPLIN,  
UNITED ARTISTS  
CORPORATION,  
By OSCAR A. PRICE,  
President.

Attest:

[Seal]

B. CLIFTON,  
Secretary.

(25c Stamps)

State of California,  
County of Los Angeles—ss.

On this 5th day of February, 1919, before me, Arthur Wright, a Notary Public in and for said County, residing therein, duly commissioned and

Petitioner's Exhibit No. 5—(Continued)  
sworn, personally appeared Charles Chaplin, known to me to be the person whose name is subscribed to the within agreement, and acknowledged to me that he executed the same.

Witness my hand and official seal.

[Seal]                      ARTHUR WRIGHT

Notary Public in and for said County of Los Angeles, State of California.

State of New York,  
County of New York—ss.

On the 13th day of June in the year one thousand nine hundred and nineteen, before me personally came Oscar A. Price, to me known, who being by me duly sworn, did depose and say that he resides in the Borough of Manhattan, City and State of New York; that he is the President of the United Artists Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Direc-

Petitioner's Exhibit No. 5—(Continued)  
tors of said corporation, and that he signed his name  
thereto by like order.

[Seal]

H. H. STREIMER

Commissioner of Deeds for the  
City of New York, residing  
in Kings County

Certificate filed in N. Y. County.

County Clerk's No. 512.

Register, N. Y. County No. 20192.

Commission expires Sept. 24, 1920.

[Endorsed]: U. S. B. T. A. Filed Feb. 26, 1941.

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Mr. Green: I would now like to offer in evidence  
conformed copy of an agreement dated July 5, 1919,  
between Charles Chaplin, Douglas Fairbanks, David  
W. Griffith, Gladys Mary Moore, professionally  
known as Mary Pickford, and the United Artists  
Corporation. [63]

Mr. Horner: No objection.

The Court: It will be received as Petitioner's  
Exhibit No. 6.

(The said document, so offered and received  
in evidence, was marked Petitioner's Exhibit  
6, and made a part of this record.)

## PETITIONER'S EXHIBIT No. 6

Agreement made this 5th day of July, 1919, between Charles Chaplin, party of the first part, and Douglas Fairbanks, party of the second part, and David W. Griffith, party of the third part, and Gladys Mary Moore (professionally known as Mary Pickford), party of the fourth part, and United Artists Corporation, party of the fifth part.

In consideration of the sum of One Dollar (\$1.00) each to all the other parties in hand paid, receipt of which is hereby individually acknowledged by all the parties hereto, each and all of the parties hereto agree with each other and all the others as follows:

First: Subdivision (i) of Paragraph 3 of each of four (4) certain contracts dated February 5, 1919, between Charles Chaplin and United Artists Corporation, Douglas Fairbanks and United Artists Corporation, David W. Griffith and United Artists Corporation, and Gladys Mary Moore (professionally known as Mary Pickford) and United Artists Corporation shall be and hereby is amended to read as follows:

And in addition to the above consideration, one thousand (1,000) shares of the common stock of the said corporation to be issued in the name of the said Artist in the form of nine (9) certificates, eight (8) of which shall be for one hundred and eleven (111) shares each and one of which shall be for one hundred and twelve (112) shares, said certificates to be delivered in escrow to a person or corporation to be agreed

upon by the parties hereto. Upon delivery by the said Artist to the said corporation of each one (1) of the first eight (8) photoplays called for by this contract, such escrow agent shall deliver to the said Artist one (1) of said certificates for one hundred and eleven (111) shares, and upon delivery by the said Artist to the said corporation of the ninth (9th) photoplay called for hereunder, such escrow agent shall deliver to the said Artist said certificate for one hundred and twelve (112) shares. Upon the expiration of the three-year period herein provided for, so many of said certificates as are then still held by such escrow agent in accordance with the provisions of this paragraph shall be delivered by such escrow agent to the said corporation.

Second: In all other respects said contract shall remain in full force and effect.

In Witness Whereof, the parties hereto have here-

unto set their hands and seals the day and year first above written.

In the presence of:

THOMAS HARRINGTON

JOHN FAIRBANKS

I. A. WIENER

FINLEY E. BENSON

G. B. CLIFTON

Secretary

CHARLES CHAPLIN (L.S.)

DOUGLAS FAIRBANKS (L.S.)

D. W. GRIFFITH (L.S.)

GLADYS MARY MOORE (L.S.)

known as Mary Pickford

UNITED ARTISTS COR-

PORATION (L.S.)

By OSCAR A. PRICE

President

(Seal of U. A. Corp.)

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: I would like to offer in evidence a conformed copy of an agreement dated August 5, 1919, between United Artists Corporation, Charles Chaplin and Dennis F. O'Brien, as Petitioner's Exhibit 7.

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 7, and made a part of this record.)

## PETITIONER'S EXHIBIT No. 7

Agreement made this 5th day of August, 1919, between United Artists Corporation (hereinafter called the "Corporation"), party of the first part, Charles Chaplin (hereinafter called the "Artist"), party of the second part, and Dennis F. O'Brien (hereinafter called the "Depositary"), party of the third part.

Whereas the Artist on the 5th day of February, 1919, executed a certain contract to be entered into with the Corporation, which said contract has been subsequently ratified and adopted by the Corporation, whereby the Artist agreed to provide the Corporation with a series of at least three photo-plays per year, beginning upon termination of the present contract between the Artist and the First National Exhibitors Circuit, Inc., but in no event later than the first day of September, 1920, for and during the period of the next ensuing three years, totaling at least nine such photo-plays within such period, in part consideration of the issuance by the Corporation to the Artist of one thousand shares of its common stock, having no par value, and

Whereas said contract, as amended by the parties thereto, provides that said one thousand (1000) shares of stock shall be issued in the name of the Artist in the form of nine (9) certificates, eight (8) of which shall be for one hundred and eleven (111) shares each and one (1) of which shall be for one hundred and twelve (112) shares, said certificates to be delivered in escrow to a person or cor-

poration to be agreed upon by the Artist and the Corporation and to be delivered one by one by such escrow agent to the Artist as each of said nine (9) photo-plays is delivered by the Artist to the Corporation, and

Whereas said contract, as amended, further provides that upon the expiration of said three-year period so many of said certificates as are then still held by such escrow agent in accordance with the provisions thereof shall be delivered by such escrow agent to the Corporation, and

Whereas, pursuant to the terms of said contract, the Corporation has issued in the name of the Artist nine (9) certificates of stock, of which eight (8) are for one hundred and eleven (111) shares and of which one (1) is for one hundred and twelve (112) shares, which certificates are still in the possession of the Corporation, and

Whereas, pursuant to the terms of said contract, Dennis F. O'Brien, Esq., 1482 Broadway, New York City, has been designated by the Corporation and the Artist to act as escrow agent hereunder.

Now, Therefore, in consideration of the premises and of the agreements herein set forth, and of the sum of one dollar, each to all the other parties in hand paid, receipt of which is hereby individually acknowledged by all the parties hereto, each and all of the parties hereto agree with each other and all the others as follows:

First: The Corporation shall forthwith deliver to, and deposit with, the Depositary the nine (9) stock certificates, representing in the aggregate one

thousand (1,000) shares of the common stock of the Corporation, which have been issued in the name of the Artist as aforesaid.

Second: Upon receipt of said stock certificates, the Depositary shall issue in respect thereof in the name of the Artist a certificate of deposit in substantially the form hereto annexed and marked Exhibit "A".

Third: Upon delivery by the Artist to the Corporation of each one (1) of the first eight (8) photo-plays called for by the aforesaid contract, the Corporation shall notify the Depositary in writing that the Artist is entitled to one (1) of said certificates for one hundred and eleven (111) shares, whereupon the Depositary shall deliver one (1) of the same to the Artist upon surrender by the latter of the certificate of deposit herein provided for and shall issue to the Artist a new certificate of deposit, substantially in the form of that annexed hereto, in respect of the number of shares remaining in escrow. Upon delivery by the Artist to the Corporation of the ninth (9th) photo-play called for by the aforesaid contract, the Corporation shall notify the Depositary in writing that the Artist is entitled to said certificate for one hundred and twelve (112) shares, whereupon the Depositary deliver the same to the Artist upon surrender by the latter of the certificate of deposit which he then holds. At the expiration of said period of three years, the Depositary shall deliver to the Corporation so many of the certificates deposited hereunder as then remain in escrow and are not the property

of the Artist, and the Artist shall return to the Depositary the certificate of deposit which he then holds.

Fourth: Any and all dividends which may be declared upon the shares of stock represented by the certificates deposited hereunder while the same, or any part thereof, are held in escrow by the Depositary shall be deposited by the Corporation in the Central Union Trust Company, No. 80 Broadway, New York City, in an account to be known as "United Artists Corporation, Trust Account No. 1". Upon delivery to the Artist by the Depositary, in the manner hereinbefore provided for, of each of the certificates deposited hereunder, the Corporation shall pay to the Artist one-ninth ( $1/9$ th) of all dividends which at the time of such delivery shall have been deposited in said account, together with accrued interest thereon. At the expiration of said period of three years, so much of such dividends and interest thereon as remain in said account and are not due the Artist shall become the property of the Corporation.

Fifth: The Depositary shall not have the right to vote the shares of stock deposited hereunder.

Sixth: This agreement shall not become binding or effective until signed by the Depositary at the end hereof, and such signature by the Depositary shall constitute an agreement by the Depositary with the Corporation and the Artist to act as Depositary in accordance with the provisions hereof and of the contract between the Corporation and the Artist hereinbefore referred to. The Depositary shall not

be liable hereunder to any of the parties hereto for any act of omission or commission not involving fraud or breach of good faith in carrying out any of the obligation herein contained. The Corporation shall reimburse the Depositary for such expenses as he may incur in connection with the safe keeping of the certificates deposited hereunder.

Seventh: This agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

In the presence of:

NATHAN BENTON

[Illegible]

UNITED ARTISTS COR-

PORATION (L.S.)

By OSCAR A. PRICE

Prest

CHARLES CHAPLIN (L.S.)

DENNIS F. O'BRIEN (L.S.)

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Mr. Green: I would like to offer a conformed copy of an agreement dated November 22, 1924, between Mary Pickford Fairbanks, Charles Chaplin, Douglas Fairbanks, Joseph M. Schenck, and United Artists Corporation. This agreement also has attached to it a letter to Mr. Charles Chaplin, which

is signed by Mary Pickford Fairbanks, Douglas Fairbanks United Artists Corporation and Joseph M. Schenck. I would like to offer the two as one exhibit.

The Court: They are now fastened together?

Mr. Green: Yes. [64]

Mr. Horner: No objection.

The Court: They may be received as Petitioner's Exhibit No. 8.

(The said documents, so offered and received in evidence, were marked Petitioner's Exhibit 8, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 8

To Charles Chaplin

Dear Sir:

Supplementing the agreement executed this date, it is agreed that if, for any reason, it becomes necessary for you to deliver to United Artists Corporation, motion pictures in which you do not personally appear, that those motion pictures will be accepted in lieu of the ones provided in your original agreement, as modified by the agreement of even date herewith, relative to the common stock that you are to receive upon the delivery of your motion pictures to the United Artists Corporation, pursuant to the aforesaid agreements, and you shall be entitled, upon the delivery of such productions, to receive the one-fifth (1/5th) of the undelivered common stock, and each of such productions shall be

Petitioner's Exhibit No. 8 (Continued)  
counted as being deliveries under the terms of the original contract, as modified by this agreement. Such productions shall be produced or supervised by you and shall be features.

MARY PICKFORD FAIR-  
BANKS

DOUGLAS FAIRBANKS

[Corporate Seal] UNITED ARTISTS CORP.

per DENNIS F. O'BRIEN,

Vice-Pres.

JOSEPH M. SCHENCK

By EDWIN J. LOEB

His Atty in Fact.

Accepted

CHARLES CHAPLIN

Agreement executed at New York, N. Y., November 22nd, 1924, by and between Mary Pickford Fairbanks, of Los Angeles, California, hereinafter sometimes referred to as "Miss Pickford", Charles Chaplin, of Los Angeles, California, hereinafter sometimes referred to as "Chaplin", Douglas Fairbanks, of Los Angeles, California, hereinafter sometimes referred to as "Fairbanks", Joseph M. Schenck, of Los Angeles, California, hereinafter sometimes referred to as "Schenck", and United Artists Corporation, a Delaware corporation, having its principal place of business at 729 Seventh Avenue, in the city of New York, hereinafter sometimes referred to as the "corporation",

## Petitioner's Exhibit No. 8 (Continued)

Witnesseth:

The parties herein contracting do so with reference to the following facts:

Miss Pickford, Chaplin and Fairbanks heretofore entered into divers agreements with each other and with David W. Griffith, of Mamaroneck, county of Westchester, state of New York, hereinafter sometimes referred to as "Griffith", resulting in the formation of the corporation and the execution of distribution agreements between each of said persons and the corporation and extensions of each of said distribution agreements other than the one between Chaplin and the corporation. Griffith has notified the corporation that he has assigned certain contractual rights held by him in such connection to D. W. Griffith's, Inc., and wherever in this agreement such construction is necessary, a reference to Griffith shall also be deemed to include a reference to said D. W. Griffith's, Inc. Miss Pickford, Chaplin, Fairbanks and Griffith are the owners of all of the preferred and common stock of the corporation, now issued and outstanding, other than certain qualifying shares issued to directors. Schenck has agreed to distribute through the corporation a series of six (6) motion picture feature photoplays starring Norma Talmadge, and to enter into an appropriate distribution agreement in connection therewith, on the conditions hereinafter specified. It is Therefore Mutually Agreed as Follows:

## Petitioner's Exhibit No. 8 (Continued)

## ARTICLE I.

Section 1. The term of the distribution agreement between Miss Pickford and the corporation is hereby extended for a period necessary to enable Miss Pickford to, and she hereby agrees to, deliver to the corporation for distribution, in addition to the nine (9) pictures originally contracted for, six (6) feature photoplays, starring her, at the rate of not less than two (2) per year, and in any event all six (6) photoplays shall be delivered on or before November 1, 1928, said photoplays to be delivered and distributed on the same terms and conditions as are set forth in the original distribution agreement, except:

(a) Miss Pickford shall receive no additional common stock beyond the amounts provided to be delivered to her during the original term of said contract.

(b) The provisions of Article IV hereof.

## ARTICLE II.

Section 1. The term of the distribution agreement between Fairbanks and the corporation is hereby extended for a period necessary to enable Fairbanks to, and he hereby agrees to, deliver to the corporation for distribution, in addition to the nine (9) pictures originally contracted for, five (5) feature photoplays, starring him, at the rate of not less than one (1) per year, or three (3) in two years, and in any event all five (5) photoplays shall be delivered on or before November 1, 1928, said

## Petitioner's Exhibit No. 8 (Continued)

photoplays to be delivered and distributed on the same terms and conditions as are set forth in the original distribution agreement, except:

(a) Fairbanks shall receive no additional common stock beyond the amounts provided to be delivered to him during the original term of said contract.

(b) The Provisions of Article IV hereof.

Section 2. Fairbanks agrees to close the roadshows of his motion picture photoplay "The Thief of Bagdad" and to deliver the same for distribution purposes to the United Artists Corporation not later than January 1st, 1925.

## ARTICLE III

Section 1. Chaplin and the corporation agree to, and do hereby modify the Chaplin distribution agreement so that Chaplin shall be obligated to deliver to the corporation for distribution only five (5) additional motion picture photoplays, described in the original contract instead of the eight (8) undelivered pictures provided for in said contract. The balance of the common stock of the corporation, which is now held in escrow for the benefit of Chaplin, shall be delivered to him in the proportion of one-fifth ( $1/5$ ) thereof upon delivery of each motion picture photoplay by Chaplin to the corporation, as in said contract provided. Chaplin agrees to deliver to the corporation not less than one (1) motion picture photoplay per year, commencing at the date hereof, and to deliver all

## Petitioner's Exhibit No. 8 (Continued)

five (5) of said photoplays on or before January 1, 1929. Chaplin also agrees to the provisions of Article IV hereof.

Section 2. Notwithstanding the provisions of Article IV hereof, it is agreed that should the financial returns from the foreign marketing, exploitation and turning to account for exhibition purposes, of the motion picture photoplay of Chaplin, about to be delivered to the corporation, not be satisfactory in his sole and absolute judgment to Chaplin, he shall have the right, as to all subsequent motion picture photoplays produced by him, to market the same in all parts of the world, other than the United States of America, Dominion of Canada, Mexico, Cuba, and other parts of the North American hemisphere, through persons or corporations other than the United Artists Corporation, or its subsidiary corporations, providing he gives written notice to the corporation to that effect at least sixty (60) days prior to delivery of the second motion picture photoplay which he is to deliver to the corporation hereunder.

## ARTICLE IV.

Section 1. The license to distribute the motion picture photoplays of the parties hereto, granted to the corporation and its subsidiary corporations, shall extend to all parts of the world and shall be subject to the foreign charges for distribution and the terms, conditions and provisions prevailing

## Petitioner's Exhibit No. 8 (Continued)

in the existing distribution agreements between Miss Pickford and the corporation, Faribanks and the corporation, and Chaplin and the corporation for the motion picture photoplay "The Woman of Paris", to-wit: said rates or charges for distribution being as follows:

England, Australia and Canada,	30% of the gross
Continental Europe, South America, Japan, Cuba and Mexico	40% of the gross
Other territories, not specifically mentioned, not exceeding	40% of the gross

The above rates apply to those countries where the United Artists Corporation, or its subsidiary corporations, maintain exchanges and actually distribute motion pictures in those countries, and five percent (5%) of the gross amount collected from licensee shall apply in such countries where the corporation does not directly distribute, all such contracts to be subject to the written approval of the owner of the motion picture first had and obtained. Should the actual cost of distribution to the corporation of the said photoplays herein referred to in the 40% territories above referred to be actually less than 40%, then appropriate refunds shall be made to the individual producers in each instance so as to reduce the actual distribution cost to them to the actual distribution cost to the corporation, such refunds to be based on two (2) year periods beginning January 1, 1925.

The reference to the corporation, as used in this Article, shall include not only the United

## Petitioner's Exhibit No. 8 (Continued)

Artists Corporation but also each and all of its subsidiary corporations now operating and doing business, or which may be created from time to time by the United Artists Corporation for the purpose of transacting business for it in various parts of the world, provided, however, that no charges for distribution shall be increased above the rates hereinbefore specified, by reason of the creation of any such corporations.

Section 2. All parties hereto agree that the charge for distribution in the United States of America, with reference to any photoplays heretofore or hereafter delivered by the parties hereto to the corporation, shall be twenty-five per cent (25%) on all contracts made by the corporation after January 1st, 1925, instead of the percentages heretofore prevailing; that should any owner of any photoplay decide to roadshow any photoplay subsequent to January 1st, 1925, he shall pay to the corporation a percentage of the net profits derived from such roadshowing of such photoplay, within thirty (30) days from the closing of the roadshows of such photoplay, the amount of such percentage to be determined by the chairman of the board of directors of the corporation and the owner of such photoplay, and in the event of their inability to agree, such amount shall be determined by a neutral third person to be selected by them. In the event of their failure to agree upon such selection, then such third person shall be selected

## Petitioner's Exhibit No. 8 (Continued)

by the board of directors of the corporation, but in no event shall such percentage to be paid to the corporation exceed ten per cent (10%), unless the owner of such photoplay expressly consents thereto.

## ARTICLE V.

Section 1. Schenck and the corporation agree to enter into an agreement providing for the distribution of six (6) motion picture feature photoplays, starring Norma Talmadge, said agreement to contain substantially the same terms as those set forth in the distribution agreement between Miss Pickford and the corporation, allowing for such appropriate changes as should be made, inasmuch as Schenck will function as the producer, manufacturing and delivering the photoplays, and Miss Talmadge as the star, whereas, in the case of Miss Pickford, she functions both as producer and star, and except, furthermore, that Schenck agrees that the provisions of Article IV shall apply to the distribution of said photoplays. Schenck agrees, however, that Miss Talmadge will execute and deliver to the corporation an agreement in writing whereby and whereunder she shall agree to perform all obligations required of her in order to enable Schenck to fulfill his obligations under said distribution agreement, and providing, further, that in the event of the death or incapacity of Schenck, and in the further event that Schenck has not otherwise provided for the completion of his obli-

## Petitioner's Exhibit No. 8 (Continued)

gations under said contract, she will carry out, perform and observe the same to the end that the corporation will be assured of receiving delivery of all six (6) photoplays. Said photoplays shall be delivered by Schenck to the corporation at the rate of not less than two (2) per year, and in any event all six (6) photoplays shall be delivered on or before November 1, 1928. The term of said distribution agreement shall commence November 1st, 1925. Said distribution agreement shall provide for the delivery to Schenck of One Thousand (1000) shares of the common stock of the corporation, said stock to be held in escrow in like manner as was provided with reference to Miss Pickford's stock, one-sixth ( $1/6$ ) thereof, or One hundred sixty-six and two-thirds ( $166\frac{2}{3}$ ) shares to be delivered to Schenck on delivery of each photoplay. At all times, however, Schenck shall be entitled to the same rights in the escrowed stock as are held by other parties hereto under similar agreements.

Section 2. Schenck hereby subscribes for the same amount of preferred stock of the corporation as has been subscribed for by each of the other parties to this agreement, other than the corporation, namely, One thousand (1000) shares of the par value of One hundred dollars (\$100.00) each, and he agrees to pay the sum of Thirty thousand dollars (\$30,000.00) in cash for three hundred (300) shares thereof, forthwith upon the execution

Petitioner's Exhibit No. 8 (Continued)  
of this agreement. All parties hereto, except the corporation, agree to pay for the balance of said preferred stock so subscribed for by them from time to time as called upon in writing by the board of directors, provided, however, that like demands shall be served on all subscribers.

#### ARTICLE VI.

Section 1. The parties hereto severally ratify and confirm the action of the board of directors in increasing the number of directors from five (5) to six (6), and in electing Schenck as a member of said board.

Section 2. As a material inducement and as part of the consideration to Schenck to enter into this agreement, the other parties hereto have agreed and do hereby agree:

(a) To cause appropriate amendments to be made to the bylaws of the corporation, creating the office of chairman of the board of directors, whose powers and duties shall be as follows, to-wit: he shall preside at all meetings of the board of directors; he shall exercise a general supervision over the affairs of the corporation and over all other officers and employees other than the directors; he shall have the sole and absolute power to execute contracts with outside producers for not exceeding a total of six (6) motion picture feature photoplays from all outside producers per year, for delivery to the corporation not later than No-

## Petitioner's Exhibit No. 8 (Continued)

vember 1, 1928, on such terms and conditions as may be approved by him, provided, however, that he shall not obligate the corporation to finance the whole or any part of the production of such photoplays or to guarantee the financial returns upon such photoplays, or agree to distribute said photoplays, or any of them, for any less percentage of earnings to the corporation, or on any more favorable terms, than are provided for in the distribution agreements of the respective parties hereto, it being understood that the chairman of the board of directors shall be entitled to be financially interested in the production of any such photoplays, provided, however, that he shall in every instance accord to the other parties to this agreement, other than the corporation, the right to participate in such financing on the same basis as he himself may be interested. The foregoing shall not be construed so as to prevent the board of directors from authorizing the execution of agreements with other producers for other product in addition to the six (6) pictures per year herein provided for. In connection with the foregoing, it is understood by the parties hereto that Schenck, who is to be the chairman of the board of directors as is hereinafter provided, may organize a finance corporation for the purpose of assisting in the financing of various outside productions, as hereinabove in this subdivision provided for; that in the event he does organize such finance corporation,

## Petitioner's Exhibit No. 8 (Continued)

the other parties hereto, other than the corporation, will be invited to become financially interested therein to such proportion as such person may elect, but in no event exceeding the amount that Schenck is interested in said corporation, and in the event that they or their respective nominees fail to become so interested, thereafter they shall not be entitled as a matter of right to participate in the financing of any individual production which may be financed in whole or in part by such finance corporation.

(initialed) U. A. Corp per D.F.O'B. C. C.  
D. F. M. P. JMB By EJL

(Rider) Each party hereto, however, reserves the right to control and determine the sales and distribution policy to apply to, and to govern his own productions, and each party further reserves the right to require the corporation to book his own productions with such exhibitors and upon such terms and conditions as he may deem fit. This provision shall be deemed an amendment to the respective distribution contracts now in force between the Corporation and the respective parties hereto.

(Rider) Neither the words "United Artists" or any words similar thereto, nor the name of any party hereto not assenting, shall be used as the title or name, or part of the title or name of the finance corporation, or

## Petitioner's Exhibit No. 8 (Continued)

in connection with such finance corporation for publicity, trade, or advertising purposes.

(b) To appoint Schenck to the office of chairman of the board of directors and to continue him in said office until at least November 1, 1928.

(c) Not to repeal, amend or revoke said amendments prior to the date last above mentioned.

Section 3. Schenck shall receive no compensation for any services rendered by him in such capacity prior to January 1st, 1927, at which time the board of directors shall determine, by a majority vote, as to what compensation he shall receive for services rendered by him prior to such date, and what compensation he shall receive thereafter, such compensation to be paid only out of the net profits of the corporation.

## ARTICLE VII

Section 1. Griffith shall be at liberty to join in the execution of this agreement as a party hereto, in which event he shall be bound by all of the provisions hereof in like manner as though he had signed this agreement originally; and furthermore, the following article shall be deemed included in this present agreement.

“The term of the distribution agreement between Griffith and the Corporation is hereby extended for a period necessary to enable Griffith to, and he hereby agrees to, deliver to the corporation for distribution five (5) additional feature photoplays at the rate of not less than

## Petitioner's Exhibit No. 8 (Continued)

one (1) per year, or three (3) in two years, and in any event all five (5) photoplays on or before November 1, 1928, said photoplays to be delivered and distributed on the same terms and conditions as are set forth in the original distribution agreement, except:

“(a) Griffith shall receive no additional common stock beyond the amounts provided to be delivered to him during the original term of said contract.

“(b) The provisions of Article IV hereof.”

In case Griffith fails or refuses to become a party to this agreement, and in the event that for any reason whatsoever the corporation distributes his productions in accordance with the provisions of the original agreement between Griffith and the corporation as extended, then, in order that Griffith shall have no preference over any of the other parties hereto, the charge for distribution for each production of the parties hereto shall be the same as for Griffith's productions, and to that end appropriate refund shall be made by the corporation to the other parties to this agreement so that the percentage cost of distribution to them shall be no greater than that paid by Griffith.

Section 2. Nothing herein contained shall be construed in any manner in derogation of the extension agreement heretofore signed by the parties hereto and Griffith, it being the intention of the parties hereto by the execution of this agreement

## Petitioner's Exhibit No. 8 (Continued)

to ratify and affirm the execution of said former extension agreement.

## ARTICLE VIII.

Section 1. Anything herein to the contrary notwithstanding, Chaplin shall have the absolute right during each year, during the period of five (5) years commencing January 1, 1925, to deliver to the corporation for distribution not more than two (2) pictures in addition to those hereinabove contracted for, upon the same terms and conditions provided in his existing contract with the corporation, as modified by this agreement, except that he shall not be entitled to receive any additional common stock upon the delivery of any such additional pictures, and that he shall not be obligated to appear in, direct or supervise such additional pictures. The provisions of Chaplin's existing contract, as modified by this agreement, shall govern and apply to each additional production in the same manner and to the same extent, and with the same force and effect, as if such productions were specifically mentioned in such agreement as modified, except as aforesaid, and except further, that the corporation agrees to adopt and use upon the main title of such additional productions and upon all paid advertising, publicity and exploitation material such wording, phraseology, and reading matter as may be required by Chaplin.

At least sixty (60) days before the delivery date of any such additional production, Chaplin shall

## Petitioner's Exhibit No. 8 (Continued)

give notice by registered mail to each of the parties hereto of his exercise of the privilege to furnish to the corporation for distribution additional productions, and upon the service of such notice, each of the parties hereto, including Schenck individually, shall have a similar right to require the corporation to distribute the same number of productions as Chaplin shall deliver to the corporation for distribution, and upon substantially the same terms and conditions as shall govern and apply to the additional Chaplin productions. Nothing herein contained shall be construed as relieving any of the parties hereto from delivering to the corporation for distribution the number of pictures hereinabove specifically provided for in the other articles.

In the event of the exercise by any of the parties hereto of the rights granted under this article, then the corporation agrees, upon request of such parties, to enter into appropriate distribution contracts with respect to such additional productions.

In Witness Whereof, the parties hereto have executed this agreement the day and year first above

Petitioner's Exhibit No. 8 (Continued)  
written, the corporation by its proper officers there-  
unto duly authorized.

MARY PICKFORD FAIR-  
BANKS

CHARLES CHAPLIN

JOSEPH M. SCHENCK

DOUGLAS FAIRBANKS

UNITED ARTISTS COR-  
PORATION

By DENNIS F. O'BRIEN

Vice-President

[Seal of U. A. Corp.]

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: I would like to offer certificates, photostatic copies of certificates, Nos. 83 to 88, inclusive, being six certificates in all of the common stock of United Artists Corporation. Each certificate is dated October 31, 1928, certificate No. 83 being for 166 shares, certificate No. 84 being for 167 shares, certificate No. 85 for 166 shares, certificate No. 86 for 167 shares, certificate No. 87 for 167 shares, and certificate No. 88 for 167 shares. All of these certificates are in the name of Mr. Charles Chaplin, and each is endorsed by Mr. Chaplin.

I offer those as Exhibit No. 9, if the Court please.

Mr. Horner: No objection.

The Court: They may be attached together by the Clerk and received as one exhibit, No. 9.

(The documents, so offered and received in evidence, were marked Petitioner's Exhibit 9, and made a part of this record.)

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### PETITIONER'S EXHIBIT No. 9

Consists of six common stock certificates, numbered from 83 to 88 inclusive, one of which is set out as follows:

Incorporated under the Laws of the  
State of Delaware

No. 83

166 Shares

### UNITED ARTISTS CORPORATION

Total Authorized Shares

8% cumulative preferred shares 8000 shares of the  
par value of \$100.00 each.

Common shares 9000 shares of no par value

This is to Certify that Charles Chaplin is the owner of 166 common shares of no par value of United Artists Corporation on the books of the Corporation transferable in person or by duly authorized attorney only upon surrender of this certificate duly endorsed and subject to the restrictions and limitations of transferability herein stated. For a statement of the rights, privileges and preferences and voting powers and the restrictions and qualifications of the preferred and common shares

of the Corporation and of the provision for redemption of the preferred shares and the sinking fund therefor reference is made to the Certificate of Incorporation and the By-Laws of the Corporation.

The Board of Directors of the United Artists Corporation on April 24, 1919, adopted a resolution as follows:

“Resolved, That in accordance with the provisions of the Certificate of Incorporation of the Corporation and particularly the Fourth Article thereof and the portion of such Article dealing with transferability of common shares, and in conformity with the By-Laws of the Corporation and particularly the Seventh Article of such By-Laws this Board prescribes the following limitation of transferability as to all common shares of the Corporation authorized, to wit, 9,000 shares; the right of holders of certificates representing such shares or any of them shall be limited in the manner provided in Article Seven of the By-Laws in case any holder of any such certificate representing any of such shares shall at any time desire to sell or give away any share or shares represented by such certificate to any person other than a person at the time actively associated with such share holder in the business of producing photo-plays. This limitation of transferability shall apply not only to each certificate for any of such 9,000 shares originally authorized when issued but to all other certificates for shares thereafter at any time issued against the transfer of such shares.”

Reference is made to such provisions of the Certificate of Incorporation and the By-Laws for a full statement of the limitation of transferability.

In Witness Whereof the Corporation has caused its corporate seal to be hereto affixed and this certificate to be signed by its duly authorized officers this 31st day of October, 1928.

(Signature illegible)

President.

F. A. BEACH,

Asst. Secretary.

For Value Received, . . . . . hereby sell, assign and transfer unto . . . . . Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

. . . . . Attorney to transfer the said stock on the Books of the within named Corporation with full power of substitution in the premises.

Dated . . . . . 19 . . . . .

CHARLES CHAPLIN

In Presence of

ALFRED REEVES

Notice: The signature of this assignment must correspond with the name as written upon the face of this certificate in every particular, without alteration, or enlargement or any change whatever.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

Mr. Green: I would like to offer as Petitioner's Exhibit No. 10 an agreement dated September 20, 1935, between [65] Charles Chaplin and the United Artists Corporation.

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 10, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 10

New York, September 20th, 1935.

Mr. Charles Chaplin  
Charles Chaplin Studios  
Hollywood, California.

Dear Mr. Chaplin:

You and the undersigned, United Artists Corporation, a Delaware corporation, Do Hereby Agree to modify subdivision (i) of Article "Third" of the agreement between us dated the 5th day of February, 1919, reading as follows:

"(i) And in addition to the above consideration, one thousand (1,000) shares of the common stock of the said corporation (\*) to be delivered in escrow to a person or corporation to be agreed upon by the parties hereto and to be held by said person until said artist (\*\*) delivers to said corporation, nine (9) photo-plays. Should said artist be unable to deliver

nine (9) such photoplays because of illness or in capacity during the said entire period of time (3) years, said artist shall receive so many of the aforesaid one thousand (1,000) shares of the common stock of this corporation as the number of photoplays delivered by said artist to this corporation pursuant to this agreement bears to the number of nine. The balance of the shares of such common stock shall be delivered by such escrow agent to this corporation."

(\*—"corporation" hereinabove mentioned meaning United Artists Corporation.)

(\*\*—"artist" hereinabove mentioned meaning Charles Chaplin.)

and Section (1) of Article Third of the agreement dated November 22nd, 1924, by and between Mary Pickford Fairbanks of Los Angeles, California, Charles Chaplin, of Los Angeles, Douglas Fairbanks of Los Angeles, Joseph M. Schenck of Los Angeles and United Artists Corporation, a Delaware corporation which reads as follows:

"Section 1. Chaplin and the corporation (\*) agree to, and do hereby modify the Chaplin distribution agreement so that Chaplin shall be obligated to deliver to the corporation for distribution only five (5) additional motion picture photoplays, described in the original contract instead of the eight (8) undelivered pictures provided for in said contract. The balance of the common stock of the corporation,

which is now held in escrow for the benefit of Chaplin, shall be delivered to him in the proportion of one-fifth ( $1/5$ ) thereof upon delivery of each motion picture photoplay by Chaplin to the corporation, as in said contract provided. Chaplin agrees to deliver to the corporation not less than one (1) motion picture photoplay per year, commencing at the date hereof, and to deliver all five (5) of said photoplays on or before January 1, 1929. Chaplin also agrees to the provisions of Article IV hereof."

(\*—"corporation" hereinabove mentioned meaning United Artists Corporation.)

in so far as the above sections relate to Certificates # 87 and # 88 respectively, each for one hundred sixty-seven (167) shares of the common stock of the United Artists Corporation, issued in the name of Charles Chaplin, dated October 31, 1928, totaling three hundred and thirty four (334) shares common stock of the United Artists Corporation, now held in escrow by Dennis F. O'Brien, Escrow Agent, and the dividends and interest thereon heretofore paid on such stock by the United Artists Corporation, and deposited in a special fund by the United Artists Corporation, together with the accumulated interest thereon, to comply with the following resolution legally adopted at a meeting of the Board of Directors of United Artists Corporation, duly called and held pursuant to the by-laws on the 19th day of August, 1935, at which a quorum of directors was present:

“Resolved, that United Artists Corporation immediately deliver to Charles Chaplin any and all stock of this corporation held in escrow, as well as all dividends escrowed, which stock and dividends have been escrowed pending the delivery of this corporation of further photoplays to be released by the said Charles Chaplin.

Be it further

“Resolved, that the attorneys, officers and agents of this corporation be, and they are hereby instructed to notify the escrow holder of this action of the Board, and instruct him to deliver said capital stock and accumulated dividends to the said Charles Chaplin.

Be it further

“Resolved, that the officers, agents and employees of this corporation be, and they hereby are directed, empowered and instructed to do any and all other things necessary, desirable or requisite to accomplish the purpose of the above resolution.”

and to direct in writing Dennis F. O'Brien, called “Depository” in the agreement dated August 5th, 1919, between United Artists Corporation, Charles Chaplin and Dennis F. O'Brien, as modified in compliance with Section (1) of Article Third of the aforesaid agreement of November 22nd, 1924, to deliver to you in compliance with the above resolution, certificates of common stock of the United Artists Corporation # 87 and # 88 respectively, each for 167 shares common stock, no par value, of

the United Artists Corporation, upon the return to the said Dennis F. O'Brien of the depositary receipts which you now hold relative to the aforesaid certificates of common stock of the United Artists Corporation;

And you and the undersigned, by these presents, have agreed that the aforesaid existing agreements between you and the undersigned, relative to the distribution of the motion picture photoplays produced or to be produced by you and distributed or to be distributed by the undersigned, Are Hereby Modified in conformity with the aforesaid resolution of the Board of Directors of United Artists Corporation, pursuant to which you are entitled to receive from the said depositary Dennis F. O'Brien the aforesaid certificates # 87 and # 88 respectively, totaling 334 shares of the common stock, no par value, of the United Artists Corporation, and the dividends heretofore paid on account of such stock and deposited in a Special Account by the United Artists Corporation, together with the interest accumulations upon the same;

Subject to your delivering to the said Depositary Dennis F. O'Brien, the depositary receipts that you now hold evidencing the depositary's receipt of such stock pursuant to said depositary agreement, and the delivery of a duly executed copy of this agreement between the parties hereto, to said depositary Dennis F. O'Brien;

And that except as herein modified, to wit, providing for the delivery to you of the aforesaid shares of stock and the dividends heretofore paid

thereon and the interest accumulations thereon, as herein provided, instead of upon the delivery by you of the fifth and sixth motion picture photo-plays respectively to the United Artists Corporation for distribution under the existing contracts between you and the undersigned, the aforesaid agreements, including the paragraphs herein modified shall remain in full force and effect.

In Witness Whereof, the undersigned, United Artists Corporation, a Delaware corporation, has caused this instrument to be executed by its duly authorized officer and you by your signature under the word "Agreed", below, have accepted and agreed to the aforesaid.

Very truly yours,

UNITED ARTISTS CORPORATION,

By A. LICHTMAN,

Pres.

Agreed:

CHARLES CHAPLIN.

New York, September 20th, 1935.

Dennis F. O'Brien, Esq.,

Depository,

152 West 42nd Street,

New York.

Dear Sir:

We, the undersigned, Charles Chaplin, and United Artists Corporation, a Delaware corporation, Do Hereby Direct You to deliver to Charles Chaplin the following described certificates:

# 87 for 167 shares common stock, no par value, of United Artists Corporation, a Delaware corporation, dated October 31st, 1928;

# 88 for 167 shares common stock, no par value, of United Artists Corporation, a Delaware corporation, dated October 31st, 1928;

both issued in the name of Charles Chaplin, upon the delivery to you by Charles Chaplin of the depositary receipts evidencing your receipt of the aforesaid shares of common stock of the United Artists Corporation, and upon such delivery by you of the above certificates to Charles Chaplin, we Do Hereby Terminate such depositary agreement and release you from any and all claims of any and all kind or character on behalf of each or both of us, and to save you harmless in the premises.

Yours very truly,

CHARLES CHAPLIN

UNITED ARTISTS CORPORATION,

By A. LICHTMAN,

Pres.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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The Court: Call your witnesses.

Mr. Horner: May I just interrupt you a moment?

The Respondent has an amended answer with an accompanying motion, which is agreeable to the

Petitioner, and I wondered if your Honor would permit me to file it at this time?

The Court: Any objection?

Mr. Green: No objection, your Honor.

The Court: Very well. It may be handed to the Clerk and will be filed. Is it necessary for a reply to be filed?

Mr. Green: I don't believe so, your Honor.

The Court: Very well.

Mr. Green: Mr. O'Brien.

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### DENNIS FRANCIS O'BRIEN

a witness on behalf of Petitioner, was duly sworn and testified as follows:

#### Direct Examination

Q. (By Mr. Green) Mr. O'Brien, will you state your full [66] name?

A. Dennie Francis O'Brien.

Q. And where do you reside?

A. 125 Walter Avenue, Yonkers, New York State.

Q. And what is your business or occupation?

A. Practitioner of law.

Q. And how long have you been admitted to practice law? A. Since 1901.

Q. What firm are you a member of, Mr. O'Brien?

A. The firm is O'Brien, Molevinsky and Driscoll. With the death of Mr. Molevinsky about ten years ago we became O'Brien, Driscoll and Raftery.

Q. What experience, Mr. O'Brien, have you had

(Testimony of Dennis Francis O'Brien.)

in connection with the motion picture theatrical business?

A. Well, the theatrical business preceded, as you understand, the motion picture business. I started in 1905 being active in the law of the theatre with George Cohan, my first client, and I have been active with him ever since.

Shall I go forward?

Q. Yes, please.

A. In 1906—in 1905 I came to New York City and became general counsel of the People's Security Company, which was an organization that represented the labor unions quite in the same way as casualty companies represented the employers. In other words, we took the plaintiff's end and acted in [67] suits. Upon completing my engagement there, I opened my own law office in the Times Building in Times Square in 1906, and, as I stated, Mr. Cohan was my first client.

Following that it became the firm of Cohan and Harris, and I represent each and both of them ever since that period. They were for a long number of years the most active and most successful producers of theatrical entertainment in America.

At and about the time that the copyright law of 1908 which had been before Congress for many years, and was then before the patent committee of the House of Representatives, I represented at all the hearings in connection with that bill, which subsequently became a law, the part of a number of

(Testimony of Dennis Francis O'Brien.)

authors, composers, and others who would be affected by the copyright law.

And it was passed—I think it was the last act of the President that it was signed—in 1908. From that time on we have been very active in matters pertaining to copyright in the courts and otherwise.

Shortly thereafter I became attorney for what was known as the White Rats actors' organization, which was the organization of vaudeville performers, and I represented them for ten years. Their average membership, which included, of course, the foreign performers—that is where I first met Mr. Chaplin, one night in a London music hall, through [68] the connection between the White Rats and the Variety Artists Federation of London, and also the Artischenoss in Germany, and the Lyric Society of France—that membership would average, I would say, in the neighborhood of 10,000 a year, and we looked after their theatrical and business affairs pretty much all throughout America, having associates in various parts of the United States.

Following that I became attorney for the Actors' Society of America, the forerunner of Equity, and served there for a number of years. Thomas A. Wise was president most of the time. And pursuant to that I became attorney for the Authors, for the Society of Authors and Producers—I may not get the names of these societies correct—which was founded by Bronson Howard and who left an endowment for it. During that period I drafted and

(Testimony of Dennis Francis O'Brien.)

introduced into Albany and followed the travel of a theatrical employment agency act which we sought to correct the abuses in contracts that had to do with the employment of actors and actresses and particularly as regards the commissions to be paid. That was finally passed.

About that time pictures came in, and for a number of years we represented many of the picture actors before they ever came out here. For instance, Miss Pickford was one of our most important clients. We represented her, or I did, from the time that she started with Mr. Zukor, and her [69] first contract was a salary contract pursuant to which acting under our advice we believed her position sufficiently strong so that it was changed into a participating in the ownership and owning half of the stock of the operation. And we continued under that—that representation was continued until her contract was finally finished with Mr. Zukor and his associates when she came out here and produced three pictures for First National. We continued to represent her and would come out on business matters for her.

I had a similar representation of Douglas Fairbanks, starting with him when he first went into pictures. In fact, I negotiated his first contract in New York and organized the Douglas Fairbanks Pictures Corporation and acted as an officer and a member of the board of directors and attorney for it. And we represented a great many other motion picture actors, including Richard Barthelmess and

(Testimony of Dennis Francis O'Brien.)

Richard Dix, and I would say a large portion of the various actors and actresses who were members of these organizations. And it was really through that connection that we were representing them.

That brings us up to about the time when the United Artists was formed.

Q. In 1919 when the United Artists was formed you represented Miss Pickford at that time, did you not?

A. An also Douglas Fairbanks. [70]

Q. And you knew Mr. Chaplin at that time?

A. I did.

Q. And at that time did you know D. W. Griffith?

A. Very well.

Q. What was his business in the motion picture industry?

A. D. W. Griffith was perhaps the longest and most successful well known director of motion pictures. Miss Pickford was originally with him down on 26th Street.

Q. Now, did you participate in any way as an attorney, Mr. O'Brien, in the organization of United Artists Corporation?

A. I did all of the way through it.

Q. Did you participate in the conferences and in the negotiations that led up to the formation of United Artists Corporation?

A. I did.

Q. Mr. O'Brien, I will show you a document entitled "Declaration of Independence" signed January 15, 1919, by Mary Pickford, William S. Hart, Douglas Fairbanks, Charlie Chaplin, and D. W.

(Testimony of Dennis Francis O'Brien.)

Griffith. I will ask you the circumstances under which that document was signed.

A. (Examining document) There had been great dissatisfaction among the persons, particularly the stars, who had won a great following and whose names meant a large return to the box office over the methods that were being pursued [71] in connection with the marketing and selling of their motion pictures. And I had been out here to complete a negotiation started in New York with Mr. Zukor for Douglas Fairbanks.

We had a distinct understanding—it was in the contract—that the Fairbanks pictures, which were being distributed by the same corporation as the Pickford pictures and certain pictures that George Cohan had made—I represented all three—that they would be sold by this separate corporation and sold separate alone and free of any connection with any other pictures, such as program pictures, which was more or less the forerunner of the block system of selling. And we had that understanding. We really did not know who owned this corporation, and we discovered later as the contract went forward that it was owned by Paramount. Paramount had been a name used by a group of distributors who zoned pictures. I mean by that that they acquired exclusive franchises to sell pictures in certain definite parts of the United States. They would own the picture exclusively for that particular section. And they sold a great many pictures, and, naturally, they used one picture to sell another. So

(Testimony of Dennis Francis O'Brien.)

we wanted to have, at least I say "we," pardon me, the producers wanted to have that, which they regarded as illegal, corrected.

They also wanted to be free to determine the choice of [72] their subjects and the amount of money they would spend, and how the pictures would be marketed, and the elements that go into the selling of the picture and the exploitation of the picture.

All my recollection is that the representatives of the First National here, or the representatives of the so-called Zukor crowd, which at that time had been—that was the Famous Players Corporation, which was his corporation and his associates—and the Jesse L. Lasky Pictures Corporation, and they had been merged. Then finally both of those were merged into the Paramount, which was a distributing company and which had been acquired by substituting stock or, rather, paying stock for the so termed franchises of various territories, and got these owners of the franchises interested in Paramount as stockholders, not as managers of these different territories.

Q. So this declaration of independence which these individuals signed was an announcement to the world, was it not, that they were associating themselves together to produce and distribute their own pictures?

A. They were doing that to protect themselves against what they thought were evils of the business.

(Testimony of Dennis Francis O'Brien.)

Q. I noticed this was signed by William S. Hart. Did Mr. Hart actually come in and participate in the new corporation? [73]

A. He participated in negotiations, but he did not join.

Mr. Green: I would like to offer in evidence as Petitioner's Exhibit No. 11, your Honor, this document.

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 11, and made a part of this record.)

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## PETITIONER'S EXHIBIT No. 11

### Declaration of Independence

A new combination of Motion Picture stars and producers was formed yesterday, and we the undersigned in furtherance of the artistic welfare of the moving picture industry, believing we can better serve that great and growing interest in picture productions, have decided to unite our work into one association; and at the finish of existing contracts, which are now rapidly drawing to a close, to release our combined productions through our own organization. This new organization to embrace the very best actors and producers in the motion picture business—headed by the following well known stars: Mary Pickford, William S. Hart,

(Testimony of Dennis Francis O'Brien.)

Douglas Fairbanks, Charles Chaplin, and the D. W. Griffith productions, all of whom have proven their ability to make productions of value, both artistically and financially.

We believe this is necessary to protect the exhibitor and the industry itself, thus enabling the exhibitor to book only pictures that he wishes to play and not force upon him, (when he is booking films to please his audience) other program films which he does not desire. Believing that as servants of the people, we can thus best serve the people. We also think that this step is positively and absolutely necessary to protect the great motion picture public from threatening combinations and trusts that would force upon them mediocre productions and machine made entertainments.

Dated at Los Angeles, Cal., Jan. 15, 1919.

MARY PICKFORD

WILLIAM S. HART

DOUGLAS FAIRBANKS

CHARLIE CHAPLIN

D. W. GRIFFITH

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Q. (By Mr. Green) Mr. O'Brien, under what state was United Artists incorporated?

A. The State of Delaware.

Q. I call your attention to Petitioner's Exhibit

(Testimony of Dennis Francis O'Brien.)

1, which provides that, on page 2, the corporation shall be organized pursuant to the laws of the State of New York. I will ask you why when the corporation was actually organized it was organized under the laws of the State of Delaware.

A. Because Mr. Joseph F. Cotton, who was representing Mr. McAdoo, desired the corporation to function under the laws of Delaware, so to be sure there would be no question as to the proper consideration paid for the issuance of the stock, he wanted that absolutely clear. He wanted the title of the stock in so far as Mr. McAdoo's 1,000 shares was concerned to be without any question. There was some doubt about the laws of the State of New York inquiring into the propriety and accuracy of consideration. [74]

Q. Yes. Mr. O'Brien, who actually as the attorney had charge of the incorporating of United Artists Corporation?

A. Mr. Joseph F. Cotton, Joseph P. Cotton.

Q. With whom was he associated?

A. He was associated with Mr. McAdoo. Our original, as the papers will show, was negotiated with Mr. McAdoo personally, and then Mr. Cotton and Franklin came out, and the firm of McAdoo, Cotton and Franklin was substituted for Mr. McAdoo.

Q. And did Mr. McAdoo receive any shares of stock of United Artists?

A. He received 1,000 shares, one-fifth of what had been voted out to the four incorporators and

(Testimony of Dennis Francis O'Brien.)

the four people who were going to make pictures. They gave him one-fifth of their stock.

Q. Did Mr. McAdoo receive shares of common or preferred stock?           A. Common.

Q. And I will show you Petitioner's Exhibit 1, which provides for the issuance of 1,000 shares of common stock of the United Artists Corporation to Mr. Chaplin, Miss Pickford, Mr. Fairbanks, and Mr. Griffith. Now, it also provides for the issuance of 1,000 shares of the common stock to William G. McAdoo, "who is to become general counsel of said corporation." I will ask you what is the consideration for the issuance of those 5,000 shares of common stock?

A. It is the consideration that is set forth in the minutes of the first meeting, which I acted as secretary, if I remember correctly, and it was the delivery of the contract; not the fulfillment.

And the bylaws are all drawn in keeping with that basis and that theory.

Q. Now, the contract to which you refer is Petitioner's Exhibit No. 5, which was executed on February 5, 1919, is that right?

A. (Examining document) Executed afterwards. Yes.

Q. And that document was executed by Mr. Chaplin on February 5, 1919, and afterwards accepted and executed by United Artists on June 13, 1919, is that right?           A. That is right.

Q. Now, I will show you here Petitioner's Exhibit No. 4, which is nine certificates of the common

(Testimony of Dennis Francis O'Brien.)

stock of United Artists Corporation, all dated June 9, 1919, and all in the name of Mr. Charles Chaplin, making a total of 1,000 shares evidenced by these certificates. I will ask you if those are the 1,000 shares of stock, common stock, that were issued to Mr. Chaplin pursuant to this agreement of February 5, 1919.       A. They are. [76]

Q. And are those the 1,000 shares of stock that were issued to Mr. Chaplin as consideration for the execution of the agreement of February 5, 1919?

A. That is my understanding.

Q. And that is Petitioner's Exhibit No. 5 in this case?       A. Yes.

Q. And I call your attention to the fact that the certificate reads in part as follows: "This is to certify that Charles Chaplin is the owner of"—in each case the number of shares represented by the certificate. I will ask you when did Mr. Chaplin actually become the owner of those shares of stock.

Mr. Horner: If the Court please, I object to that question as a conclusion of the witness. That is the very controversy in this case.

The Court: The objection will be sustained.

Mr. Green: If the Court please, may I be heard on that?

The Court: You may.

Mr. Green: If the Court please, the witness in this case represented part of the parties to the original organization of United Artists Corporation. As I will bring out in a few moments, he was general counsel for the corporation from 1920 down

(Testimony of Dennis Francis O'Brien.)

to the present date. He was also the escrow holder who took these particular shares of stock and [77] held them in escrow pursuant to the agreement of August 5, 1919, which is Petitioner's Exhibit No. 7. He was a director of the corporation, and he was also an officer of the corporation during most of the period of time that it has been in existence. Consequently, both by reason of the fact that he was the attorney for the corporation, and by reason of the fact that he was the escrow holder, by reason of the fact that he was an officer of the corporation, it is our contention that he was in a position to know who the stockholders were and when they became stockholders. Further than that, if your Honor please, I would like to call your Honor's attention to the case of Nolen vs. Nolen, 155 Cal. 477, which is authority for the fact that a witness in a proceeding is entitled to be asked who was the owner of certain property even though the witness himself is not a party to the proceeding. In this particular case, the plaintiff's daughter was on the witness stand in this Nolen case and she was asked this question: "Is this note not your own property?"

"A. It is.

"Q. Did you ever own it?           A. I never did.

"Q. Do you know who owns it?

"A. My father does."

The appellant on appeal argued that the foregoing questions called for the opinions or conclusions of the [78] witness and not for the facts. The Court said: "Of course, there is no general rule of evi-

(Testimony of Dennis Francis O'Brien.)

dence which permits a witness to substitute opinions for facts. The true rule is simple and so far as this case is concerned is well established. To permit or to refuse to permit such questions is a matter resting largely in the discretion of the trial Court, which discussion will not here be reviewed unless it is made plain that the Court's ruling in admitting the evidence has worked an injury. Generally speaking, the admission of the answer to such a question cannot work an injury where a fair latitude on cross examination is allowed, for under such cross examination the facts are certain to be adduced. It will be found frequently that an appellate tribunal upholds the rulings of questions, but the cases are far less numerous where it has felt compelled to reverse the inferior tribunal for permitting that."

If the Court please, by reason of this authority and by reason of Mr. O'Brien's connection with this particular corporation throughout its existence from the very beginning, I contend that the question is proper and he is a proper witness to answer the question.

The Court: Well, we are bound by the rules of evidence as they exist in the courts of equity in the District of Columbia. Therefore your **California** citation is not particularly helpful. The general rule of evidence, as I [79] understand it, is that the witness shall give us the facts and we shall make the determination as to the ultimate question. If, therefore, it is the issue in this case whether Mr.

(Testimony of Dennis Francis O'Brien.)

Chaplin was or was not the owner of the stock, the witness' statement one way or the other wouldn't be particularly helpful, and I think would be wholly immaterial what he thinks about it. He can give us all the facts, and we will determine the question itself.

So the ruling will be adhered to. You may have an exception. The objection will be sustained.

Mr. Green: Thank you, your Honor.

Q. Mr. O'Brien, are you the party who was designated as escrow holder under the agreement of August 5, 1919, which is Petitioner's Exhibit 7 in this case?

A. I think I am a depositary. That was the term used.

Q. Would you like to see it?

I will show you a conformed copy of an agreement of August 5, 1919, between United Artists Corporation, Charles Chaplin, and Dennis F. O'Brien. Are you the Dennis F. O'Brien that is referred to in that agreement?

A. (Examining document) I am.

Q. That agreement was actually executed on the date it bears? A. That is my recollection.

Mr. Horner: Mr. Green, what exhibit, please?

[80]

Mr. Green: No. 7, Mr. Horner.

Mr. Horner: Thank you.

Q. (By Mr. Green) Paragraph first of this agreement provides: "That there shall be delivered to you and deposited with you nine certificates of

(Testimony of Dennis Francis O'Brien.)

stock evidencing 1,000 shares of common stock of the United Artists Corporation."

Were those shares of stock actually delivered to you, Mr. O'Brien? A. They were.

Q. And are they the ones that are evidenced by Petitioner's Exhibit No. 4 in this case?

A. They are.

Q. And you took those certificates and held them as escrow holder pursuant to this agreement?

A. I did.

Q. Do you recall on what date you actually received the certificates, Mr. O'Brien?

A. It was in September. There was some delay, and all were delivered to me at one time. I have a letter from Oscar A. Price, a copy of which I have here, if you care to see it, that evidences the date.

May I refresh my recollection as to that date? (Examining document.)

The date is September 8, 1919. [81]

Q. And I will ask you if at the time these certificates were delivered to you as depositary under the agreement of August 5, 1919, if they were endorsed by Mr. Chaplin.

A. They were not endorsed.

Q. Were they ever endorsed at any time?

A. Not those.

Mr. Horner: You then refer to Exhibit 4?

Mr. Green: Yes.

Q. Mr. O'Brien, did you continue to hold those shares of stock evidenced by Petitioner's Exhibit 4 in escrow pursuant to the escrow agreement?

(Testimony of Dennis Francis O'Brien.)

A. I did.

Q. And until the certificates were finally released from the escrow holder you remained escrow holder at all times, did you not? A. I did.

Q. Was there any change to your knowledge in the ownership of the shares of stock evidenced by Petitioner's Exhibit No. 4 during the period from September 8, 1919, when you first received them, until the final termination of the escrow agreement and the release of the final certificates, 1935?

Mr. Horner: If the Court please, I think that is objectionable. It is attempting, it seems to me, to go in the back door when your Honor has ruled him out of the [82] front door.

The Court: I don't think it would be particularly helpful. The question is whether there was a change in ownership.

Mr. Green: That is right.

Mr. Horner: That, your Honor, it seems to me, contemplates the necessity first for Mr. O'Brien to determine who the original owner was before he could say whether there was a change.

The Court: It wouldn't do any harm for the witness to give his opinion, but, of course, as I have stated, we would not feel ourselves bound or conclude by his testimony that the ownership was thus and so or that there was a change in ownership or not. That would be a legal conclusion by the witness which would not be binding upon us. If you insist on him answering such a question, of course, it is subject to that effect. That is the only effect

(Testimony of Dennis Francis O'Brien.)

it would have. Now, if he gives us the facts, we can determine the ultimate question, theoretically, better than he can. That is the reason we are here. That is the thing that we are to try. I think, however, I will permit him to answer the question because of the way it is phrased, as to whether or not he knew of any change in ownership. That is how you asked the question?

Mr. Green: Yes, your Honor. [83]

The Court: So he may answer that question.

The Witness: I do not know of any change.

Q. (By Mr. Green) Mr. O'Brien, I will show you a form of certificate of deposit, and I will ask you if you can identify that document.

A. (Examining document) That is the copy of what was used in connection with the depositary agreement and the reception of the stock by me, yes.

Q. In other words, after the stock was received by you in escrow, you issued a certificate of deposit in this form? A. Yes, I did.

Q. And an original certificate of deposit evidencing the 1,000 shares of common stock issued to Mr. Charles Chaplin evidenced by Petitioner's Exhibit 4 was executed by you, was it not?

A. It was.

Q. And delivered to Mr. Chaplin?

A. It was.

Q. Or his attorney?

A. It was delivered to every one of the stockholders.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: I would like to offer this in evidence, if the Court please, as Petitioner's Exhibit No. 12.

Mr. Horner: No objection.

The Court: It will be received. [84]

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 12 and made a part of this record.)

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PETITIONER'S EXHIBIT No. 12

EXHIBIT "A"

Certificate of Deposit.

No.

No. of Shares

Certificate of  
Deposit

representing the Common Stock of United Artists Corporation.

This Is To Certify that there have been deposited with Dennis F. O'Brien (herein called the "Depository"), under a written agreement, dated 1919, (a copy of which is on file at the office of Depository), for the benefit of Charles Chaplin (herein called the "Beneficiary"), nine (9) stock certificates representing in the aggregate one thousand (1000) shares of common stock of United Artists Corporation, without par value, and that under said agreement the Beneficiary will be entitled to a delivery of said stock

(Testimony of Dennis Francis O'Brien.)

certificates or some portion thereof upon surrender hereof and upon receipt by the Depositary of a written notice from United Artists Corporation that the Beneficiary is entitled thereto under the terms of said agreement.

The holder of this certificate of deposit shall have the same voting rights as a holder of a regular certificate of common stock of United Artists Corporation.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Q. (By Mr. Green) Mr. O'Brien, I will show you a photostatic copy of a stock ledger sheet. It shows the name of Charles Chaplin, and I will ask you if that is a photostatic copy of the stock ledger sheet of the United Artists Corporation.

A. (Examining document) I would say that it is.

Q. Now——

A. (Interrupting) I got it from the treasurer before I came out, and I saw the bulletin and saw the copy.

Q. Now, this stock ledger sheet shows that on June 9, 1919 there was issued to Mr. Charles Chaplin 1,000 shares of common stock of United Artists Corporation, does it not?

A. (Examining document) It does.

Q. And are those 1,000 shares of common stock the 1,000 shares which are evidenced by Petitioner's Exhibit No. 4 in this case?           A. They are.

(Testimony of Dennis Francis O'Brien.)

Q. And this document also shows any re-issuance of those shares of common stock, does it not?

A. It does.

Q. At any time subsequent to June 9, 1919?

A. It does, when they are changed to 166 and 167 shares per [85] certificate as you have already offered in evidence.

Q. That change was on October 31, 1928, was it not?      A. Yes.

Q. And at that time the 1,000 shares of stock evidenced by Petitioner's Exhibit No. 4 were delivered back to United Artists Corporation and cancelled?      A. Yes.

Q. And in turn the United Artists Corporation issued six certificates totaling 1,000 shares, did it not?      A. That is correct.

Q. And those six certificates were delivered to you in escrow as escrow holder?

A. Well, I—yes, that is right, because Mr. Chaplin—well, he had "The Woman of Paris" for which he had received 112 shares, and then came back the 112, and I handed it back as depositary, the balance between 900 and the 112, and these new certificates were issued.

Q. Now, I will ask you, after these new certificates were issued which are Petitioner's Exhibit 9 in this case, did you shortly after October 31, 1928, deliver to Mr. Chaplin any of the certificates which you were then holding in escrow?

Mr. Horner: May I have that question read, Mr. Reporter?

(Testimony of Dennis Francis O'Brien.)

(The question referred to was read by the reporter, [86] as set forth above.)

The Witness: I did.

Q. (By Mr. Green) Mr. O'Brien, do you know how many certificates of stock you delivered to Mr. Chaplin at that time?

A. The record shows. I think it was two. He had delivered two pictures to the United Artists for which he hadn't received the stock that was to be released upon the delivery of the pictures.

Q. And those pictures were "The Gold Rush" and "The Circus," were they not?

A. That is right.

Q. And they had been completed and delivered to United Artists prior to that time?

A. That is right.

Mr. Horner: Prior to what time, Mr. Green?

Mr. Green: To this date.

Mr. Horner: That is, prior to October, 1928?

Mr. Green: Yes.

Mr. Horner: All right.

Q. (By Mr. Green) And these two certificates actually were delivered to Mr. Chaplin on or about November 8, 1928, were they not?

A. That is the date there, yes.

Q. Mr. O'Brien, I will show you Petitioner's Exhibit No. 9, [87] which is six photostatic copies of stock certificates Nos. 83 to 87, inclusive, of United Artists Corporation, evidencing shares of common stock issued to Mr. Charles Chaplin under date of October 31, 1928, and I will ask you if those

(Testimony of Dennis Francis O'Brien.)

are the six certificates that you have just testified to as having been issued on that day.

A. (Examining document) They are.

Q. And are they the certificates that are shown upon this ledger sheet as having been issued on October 31, 1928?

A. That is the date of the certificates, yes.

Q. Yes. Now, it was two of these certificates that you delivered back to Mr. Chaplin on November 8, 1928, was it?

A. That is correct.

Q. And those two were for the pictures "The Gold Rush" and "The Circus"?

A. That is right.

Q. And he also received back one of these certificates for "The Woman of Paris"?

A. That is right.

Q. So thereafter you continued to hold three certificates of stock in escrow?

A. Yes.

Q. Mr. O'Brien, do you have there a record of the actual—of the numbers of these certificates that were actually [88] delivered to Mr. Chaplin on November 8, 1928?

A. '28?

Q. Yes. I call your attention to the document you have there which I believe gives the release date on each of those pictures.

A. (Examining document) "Woman of Paris," November 4, 1923; "The Gold Rush," August 16, 1925; "The Circus," January 7, 1928; "City Lights," March 1, 1931.

Q. Now, those are the dates that those particular

(Testimony of Dennis Francis O'Brien.)

pictures were delivered to United Artists Corporation by Mr. Chaplin, were they not?

A. That is the record we have in the office.

Q. Yes. Now, I call your attention here to page 2, which recites that——

A. (Interrupting) "February 2, 1940, received of Dennis O'Brien, depository, three certificates of United Artists."

Q. This date of February 2, 1940, is an entry of your own?

A. That was examined by Mr. White here.

Q. This document shows it is to be dated November 8, 1928.

A. That is it. November 8, 1928.

Q. And that shows that on that date you delivered to Mr. Chaplin certificate No. 83 for 166 shares, which is for the "Woman of Paris," was it not?

A. That would be it, yes. [89]

Q. And you also delivered to him certificate No. 84 for 167 shares which would be for "The Gold Rush," would it not?

A. That is right.

Q. And you also delivered to him certificate No. 85 for 166 shares, which would be for "The Circus," would it not?

A. That is right.

Q. And those three certificates are a part of Petitioner's Exhibit 9, are they not, in this case?

A. I believe so. You introduced them.

Q. I show you Petitioner's Exhibit No. 9, Mr. O'Brien, and ask you if——

A. (Interrupting) What are the dates on it?

(Testimony of Dennis Francis O'Brien.)

Q. October 31, 1928. A. Yes.

Q. So the certificate Nos. 83, 84 and 85 which are a part of Petitioner's Exhibit No. 9 are the three certificates that you actually delivered to Mr. Chaplin on November 8, 1928?

A. That is correct.

Mr. Green: I would like to offer this photostatic copy of the United Artists Corporation journal in evidence as Petitioner's Exhibit No. 13.

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 13, and made a part of this record.) [90]

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 13

(Copy)

THE CORPORATION TRUST COMPANY

Name—Charles Chaplin

Address—Los Angeles, Calif.

COMMON

	Date	Folio	Certificates	Dr.	Cr.	Cr. Balance
	1919					
June	9		19			
			20-1-2-3)			
			4-5-6 )		888	
	9		27		112	
	1928					
Oct.	31		19-26	888		
	31		27	112		
	31		83		166	
	31		84		167	
	31		85		166	
	31		86)			
			7-8)		501	
	1936					
Dec.	21		3		1000	
	21		8		3000	
	21		83	166		
	21		84	167		
	21		85	166		
	21		86-88	501		
Forward						4000

(Testimony of Dennis Francis O'Brien.)

## PREFERRED

Date	Folio	Certificates	Dr.	Cr.	Cr. Balance
1919					
May 12		2		150	
Aug. 8		5		150	
1927					
Dec. 20		22		700	
1929					
June 26		22	700		
26		26		367	
Nov. 1		2	150		
1		5	150		
1		26	367		
Forward					0

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

Q. (By Mr. Green) Mr. O'Brien, I will show you an extract from the journal of United Artists Corporation, page 4, which is dated June 9, 1919, at the top, and over in the body of the document it says, "June 9, Artists contracts, \$25,000," and I will ask you if that is a correct extract from the journal of United Artists Corporation of that date.

A. (Examining document) It is.

Q. And where it refers to "artists contracts, \$25,000," I will ask you to what contracts that refers.

A. (Examining document) For the delivery of the photoplays for the corporation.

Q. Yes. But the actual contracts there that that refers to would be the distribution contracts that

(Testimony of Dennis Francis O'Brien.)

United Artists Corporation entered into with Mr. Chaplin, Miss Pickford, Mr. Fairbanks and Mr. Griffith, would they not?      A. That is right.

Q. And Petitioner's Exhibit No. 5 here is one of those agreements, is it not?

A. (Examining document) 5th day of February, 1919, yes.

Q. Now, this document, reading on, says, "Consideration for contracts with the four artists for delivery of photoplays to corporation as per resolution of the board of directors of May 29, 1919."

A. That is right. [91]

Q. And it also shows capital stock common issued 5,000 shares at no par value, but regarded as having a value of \$5 per share, does it not?

A. That was the final entry.

Q. So that is the entry that United Artists Corporation made in its journal at the time those contracts were signed, is it not?

A. With the addition of verbal advice of general counsel, which is at the bottom of it. That was Mr. Cotton.

Q. Now, 1,000 shares of those 5,000 were issued to Mr. McAdoo?      A. That is right.

Q. And that was in partial consideration for the procuring and execution of these artists' contracts, was it not, distribution agreement?

A. I wouldn't say that.

Q. Mr. O'Brien, I will ask you then——

Mr. Horner (Interrupting): I didn't catch the answer.

(Testimony of Dennis Francis O'Brien.)

The Witness: I wouldn't say it was that.

Q. (By Mr. Green) What would you say was the consideration for the issuance of 1,000 shares of stock to Mr. McAdoo?

A. It was what the four artists agreed to give him, one-fifth of their common stock, which they did, as and when the stock was issued. He got his stock directly. Then in the [92] same meeting we voted, we directors,—I participated—to employ the law firm of McAdoo, Cotton and Franklin for the current year—we weren't even functioning—and pay them \$50,000 as well as additional compensation for additional work outside of what followed to the retainer.

Q. The 1,000 shares of common stock went to Mr. McAdoo alone and not to his firm, did it not?

A. That is right.

Mr. Green: I would like to offer this extract from the United Artists Corporation journal—it shows an entry of June 9, 1919 as an entry—as Petitioner's Exhibit 14.

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 14, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 14

Extract from United Artists Corp.

Journal—June, 1919—Page #4

June 9	Artists' Contracts.....A-4	\$25,000.00
	Consideration for contracts with the four artists for delivery of photoplays to Corporation as per resolution of Board of Directors adopted May 29, 1919 (ratified by stockholders Sept. 9, 1919)	
	Capital stock—Common..C-7	\$25,000.00
	Issued 5,000 shares at no par value, but regarded to have a value of \$5.00 per share (verbal advice of General Counsel)	

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Q. (By Mr. Green) Mr. O'Brien, I will show you a document here. It says, "Re common stock United Artists Corporation." Over at the left, "Picture title." In the center of the page, "Release date," and over at the right, "Number of shares."

Now, the first title is Mary Pickford, and under her name—under the title "Picture Title," are the following: "Pollyanna," "Suds," "Love Light," "Through the Back Door," "Little Lord Fauntle-

(Testimony of Dennis Francis O'Brien.)  
roy," "Tess of the Storm," "Rosita," [93] "Dorothy Vernon," and "Little Annie Rooney."

I will ask you if those were pictures that were produced by Miss Pickford.      A. They are.

Q. And were they actually delivered to United Artists Corporation by Miss Pickford for release on or about the release date shown on this document?      A. They were.

Q. And were those the nine pictures which Miss Pickford delivered to United Artists Corporation under her distribution agreement?

A. They are.

Q. And over at the right it shows "Number of shares." Opposite the first eight pictures it shows "111 shares per each picture," and opposite the ninth it shows 112 shares, making a total of 1,000 shares. I will ask you if you also held those shares of stock in escrow.      A. I did.

Q. And were they released to Miss Pickford at or about the time that she released these particular pictures?      A. They were.

Q. And Miss Pickford was to produce her nine pictures under the agreement that she entered into with United Artists Corporation on February 5, 1919, within a period of three years also, was she not? [94]      A. That is correct.

Q. Now, I call your attention to the pictures "Dorothy Vernon," which shows a release date of August 3, 1924, and "Little Annie Rooney," showing a release date of October 19, 1925. Those

(Testimony of Dennis Francis O'Brien.)

pictures were delivered to United Artists Corporation after the expiration of the three year period called for in her agreement?

A. That is correct.

Q. But you actually did, nevertheless, deliver to her on August 3, 1924, a certificate for 111 shares and on October 18, 1925, a certificate for 112 shares, did you not? A. That is correct.

Q. Now, the next title is "Douglas Fairbanks," and under "Picture Title," it has these pictures: "His Majesty the American," "When the Clouds Roll By," "The Mollycoddle," "The Mark of Zorro," "The Nut," "The Three Musketeers," "Robin Hood," "Thief of Bagdad," "Don Q, Son of Zorro." I will ask you if Mr. Fairbanks produced those nine motion pictures. A. He did.

Q. Were those pictures produced by Mr. Fairbanks pursuant to the agreement of February 5, 1919? A. They were.

Q. And were they delivered to United Artists Corporation for release pursuant to that agreement? [95] A. They were.

Q. And were they released by Mr. Fairbanks to United Artists Corporation on or about the release date that this document shows?

A. That is my recollection.

Q. Now, under "Shares" here, it also shows that you delivered to Mr. Fairbanks one certificate of stock for 111 shares at the time he released each of the first eight pictures, is that correct?

(Testimony of Dennis Francis O'Brien.)

A. That is correct.

Q. And you delivered to him the ninth certificate for 112 shares when he released the last picture, "Don Q, Son of Zorro"?

A. That is right.

Q. Now, I call your attention to the fact that pictures 8 and 9, "The Thief of Bagdad" and "Don Q, Son of Zorro," were delivered on December 25, 1924 and August 30, 1924, respectively, is that correct?

Mr. Horner: '25.

The Witness: Yes.

Q. (By Mr. Green) And I will ask you if those two pictures weren't delivered after the expiration of the three year period in Mr. Fairbank's contract of February 5, 1919, with United Artists Corporation.

A. That is my recollection. [96]

Q. But nevertheless when he delivered those pictures, you did release to him the shares of stock?

A. I did.

Q. Set forth in this document? A. Yes.

Q. Next, under "D. W. Griffith"—

The Court (Interrupting): Do you propose to introduce this schedule in evidence?

Mr. Green: Yes, your Honor.

The Court: Let's mark it and receive it and not read it all into the record.

Mr. Green: Very well.

If the Court please, I would like to refer to Mr.

(Testimony of Dennis Francis O'Brien.)

Chaplin's particular pictures, since they are only four, in length.

The Court: You may refer to it at any length you desire. Proceed. I am not telling you how to try your case, but it might shorten it if we might simply receive the exhibit.

Mr. Green: Thank you.

Q. Mr. O'Brien, the document shows that "The Woman of Paris" was delivered on November 4, 1923, is that correct? A. Yes.

Q. And at that time the three year period in Mr. Fairbanks' contract under which he was to deliver nine pictures had already expired, had it not?

[97]

A. You mean Mr. Chaplin?

Q. Mr. Chaplin. Yes.

A. That is correct.

Q. So that within a three year period called for in Petitioner's Exhibit 5 Mr. Chaplin had not delivered a single picture to United Artists Corporation? A. That is right.

Mr. Green: I would like to offer this in evidence as Petitioner's Exhibit No. 15.

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 15, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

## PETITIONER'S EXHIBIT No. 15

Re Common Stock—United Artists Corporation

## MARY PICKFORD

Picture Title	Release Date	Shares
1 Pollyanna	January 18, 1920.....	111
2 Suds	June 27, 1920.....	111
3 Love Light	January 9, 1921.....	111
4 Through the Back Door	May 15, 1921.....	111
5 Little Lord Fauntleroy	November 13, 1921.....	111
6 Tess of the Storm	November 12, 1922.....	111
7 Rosita	October 28, 1923.....	111
8 Dorothy Vernon	August 3, 1924.....	111
9 Little Annie Rooney	October 18, 1925.....	112
Total shares delivered.....		1,000

## DOUGLAS FAIRBANKS

1 His Majesty the American	September 1, 1919.....	111
2 When The Clouds Roll By	December 28, 1919.....	111
3 The Mollycoddle	June 13, 1920.....	111
4 The Mark of Zorro	December 5, 1920.....	111
5 The Nut	March 6, 1921.....	111
6 The Three Musketeers	October 2, 1921.....	111
7 Robin Hood	January 28, 1923.....	111
8 Thief of Bagdad	December 25, 1924.....	111
9 Don Q, Son of Zorro	August 30, 1925.....	112
Total shares delivered.....		1,000

## (Testimony of Dennis Francis O'Brien.)

Picture Title	Release Date	Shares
D. W. GRIFFITH		
1 Broken Blossoms	October 20, 1919.....	111
2 The Love Flower	September 5, 1920.....	111
3 Dream Street	May 16, 1921.....	111
4 Way Down East	August 21, 1921.....	111
5 Orphans of the Storm	April 30, 1922.....	111
6 One Exciting Night	December 24, 1922.....	111
7 The White Rose	August 19, 1923.....	111
8 America	August 17, 1924.....	111
9 Isn't Life Wonderful	November 23, 1924.....	112

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Total shares delivered.....1,000

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## CHARLES CHAPLIN

1 Woman of Paris	November 4, 1923.....	166
2 The Gold Rush	August 16, 1925.....	167
3 The Circus	January 7, 1928.....	166
4 City Lights	March 1, 1931.....	167

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666

1935..... 334

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1,000

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[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Q. (By Mr. Green) Were there any dividends declared upon the shares of common stock of United Artists Corporation between 1919 and 1935 when this last 334 shares of stock was released from escrow?      A. Yes.

Q. And were those dividends in the amount of \$44,532.22, which were actually declared upon the 334 shares of stock that you released to Mr. Chaplin in September of 1935?

(Testimony of Dennis Francis O'Brien.)

A. I wouldn't know the amount personally, but that is what Price Waterhouse Company figures show that I saw yesterday.

The Court: Isn't that stipulated, Mr. Green?

[98]

Mr. Green: I believe so.

Mr. Horner: Yes, it is stipulated, your Honor. It is also admitted in the answer.

Q. (By Mr. Green) What was done with these dividends at the time they were declared by the United Artists Corporation in connection with the stock that was then held by you in escrow, Mr. O'Brien?

A. Pursuant to the bylaws they had to be voted out to the owners of the stock and the shareholders that appeared upon record as of the time when they were voted, and they were then, after they had been declared and became the property of the owner, they were then put into a special account called Trust Account No. 1 and upon which interest was paid on those particular moneys and then they became part of the original contract pursuant to the distribution contract as security for the performance of the contract.

Q. Then, when any shares of common stock were released by you from escrow, were the dividends which had been declared upon those particular shares of common stock and impounded or placed in escrow also released to the artists?

A. They were.

(Testimony of Dennis Francis O'Brien.)

Q. And at the time the dividends were actually delivered over to Mr. Chaplin the interest was also delivered and paid to him, was it not?

A. That is correct. [99]

Q. Now, Mr. O'Brien, I call your attention to Petitioner's Exhibit No. 7, which is the escrow agreement, dated August 5, 1919, under which 1,000 shares of stock issued to Mr. Chaplin was placed with you in escrow pursuant to his distribution agreement of February 5, 1919. I will ask you what were the reasons for placing these 1,000 shares of common stock in escrow with you.

Mr. Horner: If the Court please, that seems to be burdening the record unnecessarily. The contracts in evidence in this case show the reasons for these deposits with the escrow agent. I don't think he can add anything to it.

The Court: If he can add anything to it, we will hear him.

The Witness: It was in conformity with the basic agreement in the very last paragraph, as I recollect it, in which they agreed to do certain things with the corporation and for the benefit of each other, and so forth, and that in my opinion that part of that basic contract was never supplemented by any other act done by the parties thereto.

From the very beginning it was the desire—as took place in the discussions and as carried out by the attorneys representing the four participants—that they would own their own corporation. They

(Testimony of Dennis Francis O'Brien.)

would have no foreign interest represented in that corporation, and they were going to do as far as they were able, and as far as their attorneys could [100] advise, to put the addition of such a foreign interest—to make it practically impossible. They had one prohibition in there about the sale of the stock: it would have to be offered to each of the others before it could be sold. Of course, that didn't protect them completely, because the sale price might be way beyond what they would care to pay for it and that foreign interest might come in, just as we had had in another corporation we were in where Miss Pickford had half of the stock, yet that didn't prevent the other half from turning this over to Paramount. The other was that as evidence of their good faith and as their desire to have this whole thing on as near a spirit of equality without one profiting on the stock of the other, so that each one would be entitled to sharing in the number of pictures that was delivered by that person to the others, we all knew, and it was very apparent that these four producers would all start at different times. Mr. Chaplin had quite a burden ahead of him before he would complete his contract, and as it was, it wasn't completed within the three year period. Douglas was nearly ready, and he would start first. And D. W. Griffith came along then, and then Mary had either one or two pictures to finish with First National. Now, then, by putting that stock and the dividends and security

(Testimony of Dennis Francis O'Brien.)

for their particular promises to each other and to the corporation, it made it nearly [101] prohibitive for anybody getting into that corporation other than a producer and a producer of the type of motion pictures that would sell themselves and not be sold by other pictures. And this worked out pretty nearly in keeping with what it was originally planned, to make it cooperative. In other words, Douglas had seven pictures delivered. His stock and security and the dividends, if any, coming up. Now, then, Charlie would have to deliver an equivalent amount of pictures, or as subsequently worked out, pictures that grossed equal to the amount of Douglas before he really got the earnings.

It was an equal basis. There was never any thought but what that was the stock of the owners. Otherwise the corporation couldn't function. It would violate every provision of its bylaws and of its incorporation papers. They had the right to vote it and did vote it. They had the right to get the dividends, but they went up as security, and that was the reason for it, and all got their stock that way. It is my belief that when those dividends were declared they then belonged to the owners and the tax then should be paid on them.

Mr. Horner: If the Court please, I ask the last clause of the witness' statement be stricken as not responsive to the question.

The Court: We will let it stand, though it will not [102] be persuasive upon us. I don't think that it is responsive.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: Mr. Horner, I don't believe I covered it in the record, so may it be stipulated that United Artists Corporation was actually organized on April 17, 1919?

Mr. Horner: Yes. I will stipulate to that.

Mr. Green: Thank you.

Q. At the time of the expiration of the three year period called for in Petitioner's Exhibit No. 5 during which time Mr. Chaplin was required to produce and deliver to United Artists Corporation nine pictures, had he actually during that period of time delivered any pictures to United Artists Corporation?

A. That is the first three years?

Q. Yes.           A. No.

Q. Now, I call your attention to Petitioner's Exhibit No. 7, which provides in paragraph fourth as follows: "At the expiration of said three years the depository shall deliver to the corporation so many of the certificates deposited hereunder as then remained in escrow and not the property of the artists, and the artists shall return to the depository the certificate of deposit which he then holds."

I will ask you if upon the expiration of said three year period you did pursuant to this agreement of August 5, 1919, actually deliver back to United Artists Corporation [103] any of the shares of common stock issued to Mr. Chaplin evidenced by Petitioner's Exhibit No. 4.           A. I did not.

Q. Was any demand made upon you by United

(Testimony of Dennis Francis O'Brien.)

Artists Corporation to deliver back any of those shares of stock to the corporation?      A. No.

Q. Was any demand made upon you by any other stockholder, officer, or director of United Artists Corporation to deliver back those shares of stock issued to Mr. Chaplin?      A. No.

Q. During said three year period was there any agreement entered into for the filing of said agreement of February 5, 1919, which it has the effect of giving Mr. Chaplin an extension of time under which he would be required to deliver those nine pictures?      A. No.

Q. Upon the expiration of the three year period from February 5, 1919, was any demand made that you deliver back to United Artists Corporation any shares of common stock which you held in escrow for any of the other parties to those distribution agreements?

A. No demand of any kind from anybody.

Q. And isn't it true that upon the expiration of said three year period each of the parties to those distribution [104] agreements was in default so far as the completion of nine pictures within the three year period of time is concerned?

A. I would say that they had not delivered them. I wouldn't say they were in default. I didn't give that consideration. I never asked.

Q. But, nevertheless, you did continue to hold these shares of stock for each one of them pursuant to the escrow agreement?      A. Yes.

(Testimony of Dennis Francis O'Brien.)

May I explain that?

Mr. Horner: Yes.

The Court: I think we will suspend at this time for a brief recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

The Court: You may proceed. I think there was probably an unanswered question. The witness just started to answer. Will you read the last question and answer?

(The record referred to was read by the reporter, as set forth above.)

The Court: You started to explain it when I interrupted you.

The Witness: I have forgotten the explanation.

The Court: You may proceed. You may ask another question. [105]

The Witness: This is what I wanted to add there, that we all know Mr. Chaplin was having a great deal of litigation at the time over the delivery of "The Kid" to the First National, and we knew that he couldn't be making pictures, so we all knew the whole situation there and that he had departed from the production of two to three reel pictures to longer pictures, six reels or more that required a great deal of time. So it was quite apparent to everybody. We were all close together. That was the only explanation. You can strike it from the record, if you want, but that was probably why nothing was done at that time.

(Testimony of Dennis Francis O'Brien.)

Q. (By Mr. Green) As a matter of fact, the four pictures, "The Woman of Paris," "The Circus," "The Gold Rush," and "City Lights" were all pictures of five reels or greater, were they not?

A. They are; the sort of pictures not contemplated by the agreement when it was first drawn.

Q. I call your attention to the fact that Petitioner's Exhibit No. 5 calls for pictures, nine pictures, within the three year period of between 1600 and 3000 lineal feet in length.

A. That is right.

Q. And how many—

A. (Interrupting) Also a right to produce what was called an extraordinary picture, such as "The Birth of A Nation" or [106] "The Kid," when they could do that after they would have made the minimum required.

Q. Approximately how many feet are there in an ordinary picture?

A. At that time they were five reels. They ran from about 4600, 4500 feet, to 7,000 feet, 1,000 foot a reel. In other words, an hour was the part of the program that was used pretty much for the feature picture, and the second hour for the variety part, the short part, or whatever else might be there, like newsreels or special features of short duration to make up the program of two hours to a general program.

Q. Mr. O'Brien, what rights did Mr. Chaplin exercise in connection with this 1,000 shares of

(Testimony of Dennis Francis O'Brien.)

common stock during the period of time that it was held by you in escrow?

Mr. Horner: Just a moment. I don't believe I understand the nature of the question. What right? I don't know what kind of rights you are talking about.

Mr. Green: I mean by voting, voting rights, attending directors' meetings, stockholders' meetings, participating to the fullest extent in every way in the management and direction of the affairs of United Artists Corporation.

Q. You may answer.

A. He had the right to vote and the right to receive notices, and the right to have dividends voted on the [107] stock and subsequently put into a form of escrow, or it wasn't deposited, because the corporation kept that money in a special fund; and he exercised all of the rights set forth in the bylaws as the holder or owner of the stock. And in my judgment it was specifically set forth, and I might be termed the holder of that stock, that I had no right to vote.

Q. The escrow agreement, which is Petitioner's Exhibit No. 7, expressly provides that Mr. Chaplin shall have the right to vote the stock during the time it was in escrow, does it not?

A. That is right.

Q. And during the period of time that any or all of these shares of common stock was in escrow did Mr. Chaplin at all times vote the full 1,000 shares?

A. That is my recollection.

(Testimony of Dennis Francis O'Brien.)

Q. Did he attend stockholders' meetings from time to time?

A. When we held them out here, and in the east Nathan Burkan, his attorney, who has since left us, I am sorry to say, voted that. He was his proxy. He had that right to issue proxies.

Q. Did Mr. Chaplin attend directors' meetings from time to time?      A. Oh, yes.

Q. Did he participate fully in the direction of the affairs of the corporation at all times? [108]

A. He certainly did, and was very valuable.

Q. Mr. O'Brien, was there any distinction at any time in the voice that each stockholder was entitled to enjoy dependent upon the question of whether or not his stock was in or out of escrow?

A. Their stock was treated exactly as Mr. McAdoo's stock.

Q. So that every stockholder had equal voting rights and equal rights in every respect in connection with their shares of common stock regardless of whether it was in or out of escrow?

A. That is right.

Q. That is right?      A. That is correct.

Q. Mr. O'Brien, I will ask you if immediately after the corporation was organized if you became a director.      A. Yes.

Q. And what office or offices have you held for the corporation during the time it has been in existence?

A. With the exception of a very short period I

(Testimony of Dennis Francis O'Brien.)

have been a director, and part of the time I have been secretary, and most of the time first vice president, and for a period of years when we hadn't any president, that is, after Mr. McAdoo's resignation and Mr. Oscar Price, whom he designated as president, because he had the right under the agreement to designate the president and the secretary, I acted as [109] the president. There is little to do, because the general sales manager, Mr. Abrams, did the selling.

Q. I will ask you if you have acted at any time as general counsel for the corporation.

A. Oh, yes, even when Mr. McAdoo was—his firm were acting, because I did practically all of the work, because they weren't familiar with it.

Q. And when did Mr. McAdoo cease to be connected with the corporation?

A. At the second annual meeting in April of the year succeeding.

Q. That would be April of 1920?

A. April of 1920 or thereabouts.

Q. Yes.

Now, I will show you an affidavit of Dennis F. O'Brien, dated July 25, 1930, and ask you if you are the person who executed that affidavit.

A. (Examining document.) I am.

Q. I will ask you if you will describe the purposes for which this affidavit was given by you.

A. It was provided to clear up the question of ownership of stock in England on a tax question

(Testimony of Dennis Francis O'Brien.)

and given at the request of Price Waterhouse and Company, the English subdivision and a Mr. Godela, counsel for the United Artists, and it recites the history of the issuance of our stock here and [110] the ownership of the stock, and upon that affidavit—well, this is the information, of course, Mr. Godela informed me the question was cleared and the proper entry made.

Q. This affidavit recites at that time that you were both a director and attorney for the corporation, does it not?      A. That is correct.

Q. And that you made this affidavit for and on behalf of the corporation?

A. And it was approved by the board of directors, and a certificate to that effect sent over with the affidavit.

Q. Now, I call your attention to the fact that paragraph ninth of the agreement provides:—

Mr. Horner: Just a moment, please. Mr. Green, did you intend to offer this affidavit in evidence?

Mr. Green: Yes.

Mr. Horner: I suggest you do it at this time, so I can object to it, and if the Board permits it to be placed in evidence, then there will be a little greater leeway on my part so far as your examination will be concerned. I don't want to direct your movements, but it seems to me it is improper to quote from the affidavit when it isn't even in evidence or hasn't been marked.

Mr. Green: At this time, if the Court please,

(Testimony of Dennis Francis O'Brien.)

I would like to offer a conformed copy of this affidavit in evidence as Petitioner's Exhibit No. 16, I believe.

The Court: It may be handed to the Clerk and marked for identification as Petitioner's Exhibit No. 16.

(The said document, so offered, was marked Petitioner's Exhibit No. 16 for identification.)

Mr. Horner: You are offering that in evidence, Mr. Green, at this time?

Mr. Green: Yes.

Mr. Horner: I object, your Honor. I haven't seen the affidavit, but from what little I have heard, I assume it is an attempt on the part of this witness to explain the ownership of the stock, something that your Honor ruled on this morning, and furthermore, it seems to me to be wholly immaterial in this proceeding. It is apparently related to some controversy with England over some taxes; a self-serving declaration, probably.

Mr. Green: It couldn't be a self-serving declaration, because Mr. O'Brien is not a party to this proceeding.

Mr. Horner: He is an officer of the corporation.

The Court: Let's let counsel examine the document. He may not wish to object to it.

Mr. Horner: May I offer one more objection, your Honor, and that is that the witness who executed this particular affidavit is present, and it

(Testimony of Dennis Francis O'Brien.)

seems to me that anything that it is proper for him to say in the form of [112] an affidavit certainly ought to be proper for him to say in the form of testimony.

Q. (By Mr. Green) Calling your attention to paragraph——

The Court (Interrupting): Just a moment. I doubt if the document is admissible in evidence for any purpose. The witness who made the affidavit is here. If you wish him to testify to any facts, he, of course, can do so.

Mr. Green: If your Honor please, the Petitioner's contention is that the affidavit is admissible in evidence, at least so much of the affidavit as relates to this particular proceeding is admissible in evidence, for this reason: The affidavit was made by Mr. O'Brien in 1930 at a time when he was the general counsel for the corporation, when he was also a director of the corporation. He makes the affidavit for and on behalf of the corporation, and the particular points in the affidavit that are vital to the issues in this case are that in the affidavit he recites who the stockholders are of the corporation and the number of shares that each own. Now, it is our contention that the affidavit is admissible, because here is an affidavit by the corporation in 1930 reciting who the stockholders were and how many shares they own, and the affidavit in this particular instance shows that Mr. Chaplin was the owner of 1,000 shares of common stock; and for that reason,

(Testimony of Dennis Francis O'Brien.)

if your Honor please, I submit that the affidavit is proper evidence in this [113] proceeding.

The Court: No. I think not. If he had made, or the corporation had made some contrary statements, it might be permissible to show in evidence the admission to the contrary, but I know of no reason why an affidavit made *ex parte* should be received, especially when we have the witness who made the very affidavit himself at the hearing. I don't know what you can prove by that affidavit that you can't prove by the man who made the affidavit, and he is here.

Mr. Green: As I understand it, if your Honor please, this affidavit, since it was made on behalf of the corporation, and as its act, is just as material and just as much a corporation document as the stock certificates, as the contract, as any other instrument executed on behalf of the corporation to show the condition of its affairs and who its stockholders were. I can't see any distinction.

The Court: Well, you don't have any corporate records here, as I understand it, which this affidavit is embodied as a part of the records of the corporation.

Mr. Green: Yes, your Honor.

The Court: Where are they?

Mr. Green: The minute book. This came out of the minute book.

The Court: If you desire to introduce a minute book [114] of the corporation in evidence for some purpose, it may be admissible.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: If your Honor please, aren't we permitted, and I would like to offer this affidavit in evidence as being an extract from or a portion of the minute book itself. I don't care to offer the entire minute book, but I would like to offer this as a part of the minute book.

Mr. Horner: If the Court please, this, as I explained before, is new to me in the case. I have had no opportunity to read it or consider it, and I don't wish to be unduly obstreperous in my objections, but I can't see any basis at the present time for agreeing to this procedure. And if Mr. Green will pass that for the time and at least until after recess and give me an opportunity, maybe I will help him. I will if I can.

The Court: On the showing made so far, I will have to sustain the objection to the receipt in evidence of the document, which has been marked for identification as Petitioner's Exhibit No. 16.

Mr. Green: May we have an exception, your Honor?

The Court: Exception may be noted.

Mr. Wright: It is understood that we may pursue the matter with Mr. Horner after recess?

The Court: Yes.

Q. (By Mr. Green) Mr. O'Brien, Mr. Chaplin was never under [115] contract at any time to render any personal services to United Artists Corporation, was he? A. He was not.

Q. And did he during the period from the in-

(Testimony of Dennis Francis O'Brien.)

ception of the corporation to September of 1935, when the remaining two certificates were released from escrow, render any services to the United Artists Corporation except such services as a director, officer, and a stockholder usually renders to a corporation?      A. He did not.

Mr. Green: Mr. Horner, I propose to offer in evidence a series of excerpts from the minutes of directors, stockholders and executive committee meetings of the United Artists Corporation at this time. I believe I furnished you with copies of these minutes, and in the interest of time, if you would like to follow me with your copy as I go through, you may.

Mr. Horner: Just a moment. Off the record a moment.

The Court: Very well.

(Discussion outside the record.)

The Court: On the record.

Q. (By Mr. Green) Mr. O'Brien, I show you an excerpt from the resolution of the board of directors' meeting of United Artists of April 24, 1919, relating to compensation to be paid to the firm of McAdoo, Cotton and Franklin for their [116] services as counsel for the corporation. That is a true excerpt from the minutes of the corporation meeting?

A. Yes. That is substantially as I just testified about it.

Mr. Green: I would like to offer as Petitioner's Exhibit next in order this document.

(Testimony of Dennis Francis O'Brien.)

The Clerk: 17.

Mr. Horner: No objection.

The Court: Very well. It will be received as Petitioner's Exhibit No. 17.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 17, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 17

(copy of resolution from "Minutes of the First Meeting of the Board of Directors of United Artists Corporation held April 24, 1919)

"Upon motion duly made, seconded, and carried, it was

Resolved that McAdoo, Cotton & Franklin, Esqrs., be retained as General Counsel for the corporation and that they be paid a retaining fee for their services as General Counsel for the calendar year of 1919 of Fifty Thousand dollars (\$50,000), such compensation to cover services rendered by them in connection with the preparation of contracts and preliminary organization of the corporation and shall include the giving of personal attention to the matters of the corporation and the handling of the usual office work and the attendance at conferences at their office in New York City, but

(Testimony of Dennis Francis O'Brien.)

not services in special matters or in litigation, compensation for which services if rendered to be additional and specially provided for."

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Q. (By Mr. Green) Now, I will show you an excerpt from the minutes of special meeting of the board of directors of United Artists Corporation on May 29, 1919, relating to the issuance of 5,000 shares of the common stock of the United Artists Corporation. A. That is correct.

Q. And these minutes provide for the issuance of 5,000 shares of common stock, do they not?

A. Yes, sir, and also for designating Dennis F. O'Brien as escrow agent.

Q. Now, the 5,000 shares of stock were issued pursuant to those minutes, were they not? [117]

A. That is correct.

Q. And 1,000 shares of that stock were the ones that were issued to Mr. Chaplin, Petitioner's Exhibit 4? A. Yes. Yes.

Q. And this also provides for the issuance of 1,000 shares of stock to Mr. McAdoo?

A. That is correct.

Q. And what is the consideration for the execution of Mr. McAdoo's stock, for the issuance of Mr. McAdoo's stock?

A. To resolve that in consideration of the delivery of said contracts to this corporation—

(Testimony of Dennis Francis O'Brien.)

The Court (Interrupting): Don't read the exhibit. If you are going to offer it, let's offer it.

The Witness: It is recited in there.

The Court: Is it an exhibit?

Mr. Green: Yes.

The Court: No. 18. Any objection?

Mr. Horner: No objection.

The Court: It will be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 18, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 18

(excerpt from "Minutes of Special Meeting of the Board of Directors of United Artists Corporation Held on May 29, 1919" at 729 Seventh Avenue, New York.)

"The secretary presented four (4) certain contracts each dated February 5, 1919, executed respectively by Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) such four contracts being known collectively as the artists' contracts and executed by this corporation on the 29th day of May, 1919, pursuant to resolution of the Board of Directors adopted at a meeting of said Board, held on May 20th, 1919, said contracts being delivered on behalf of the above-named artists

(Testimony of Dennis Francis O'Brien.)

to this corporation in accordance with a certain contract between the above-named artists also dated February 5th, 1919, providing for the incorporation of this corporation, copy of which last mentioned contract was also presented by the secretary and directed to be filed among the corporate records of this corporation. Whereupon the following resolutions made by Mr. Banzhaf and seconded by Mr. Burkan were unanimously adopted:

Whereas in the judgment of the Board of Directors the photoplays agreed to be delivered to this Corporation under said contracts are necessary for the business of this Corporation and constitute good and sufficient consideration for the issue of five thousand (5000) shares of the common stock of this corporation, the same being without par or nominal value:

Resolved that, in consideration of the delivery of said contracts to this Corporation, the proper officers of this Corporation be, and they hereby are, authorized to issue and deliver to William G. McAdoo, Esq., one thousand (1,000) shares of no par value of this corporation fully paid and non-assessable, said shares to include the shares of no par value subscribed for by the signers of the certificate of incorporation of this Corporation, assignments of said subscriptions being held by him; and

Resolved that, in consideration of the deliv-

(Testimony of Dennis Francis O'Brien.)

ery of said contracts to this Corporation, the proper officers of this Corporation be, and they hereby are, authorized to issue to said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) one thousand (1,000) shares of no par value each, making a total of four thousand (4,000) shares of no par value to a person or corporation to be agreed upon by said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this Corporation, and to no other person, said four thousand (4,000) shares to be held by said person or corporation in escrow in accordance with the provisions of said contracts between said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this Corporation; and

Resolved that the proper officers of this Corporation be, and they hereby are, authorized and directed to execute an escrow agreement for the holding and delivery of said four thousand (4,000) shares of non-par value in accordance with the terms and provisions of said contracts between said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this Corporation dated Febru-

(Testimony of Dennis Francis O'Brien.)

ary 5th, 1919, said escrow agreement to provide that while said four thousand (4,000) shares are held in escrow, each of the afore-said artists shall have the right to vote his or her respective holdings thereof; provided that said escrow agreement shall be approved by the general counsel of this corporation before execution of the same by its officers.

On motion of Mr. Burkan, seconded by Mr. Banzhaf, Mr. Dennis F. O'Brien was designated as escrow agent for the corporation to hold the four thousand (4,000) shares of no par value common stock to be issued to the four artists. At the same time the treasurer was authorized to reimburse Mr. O'Brien for such expense as he may incur in renting a safe-deposit box for the safe-keeping of such shares of stock."

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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The Court: You may call our attention to it in brief, but this is not necessary to read it into the record.

Mr. Green: I would like to offer this as Petitioner's [118] Exhibit 18.

Q. I will show you the minutes of the regular meeting of the board of directors of the United Artists Corporation, June 10, 1919, relating to an amendment of the distribution agreement of Mr.

(Testimony of Dennis Francis O'Brien.)

Chaplin's dated February 5, 1919. I would like to offer these in evidence as Petitioner's Exhibit next in order.       A. That is correct.

The Court: Any objection?

Mr. Horner: No objection.

The Court: It will be received as Petitioner's Exhibit No. 19.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 19, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 19

Minutes of Regular Meeting of Board of Directors  
of United Artists Corporation Held  
June 10, 1919

A regular meeting of the Board of Directors of the United Artists Corporation was held in the offices of the Corporation at 729 Seventh Avenue in the city of New York, N. Y., on the 10th day of June, 1919, at 3:20 o'clock p.m.

Present: Mrs. Pickford, Messrs. Banzhaf, Burkan, O'Brien and Price.

The minutes of the special meeting of May 29th were read, and on motion duly made and seconded, were unanimously approved.

On motion duly made, seconded and unanimously carried, it was

Resolved, that the President be and he here-

(Testimony of Dennis Francis O'Brien.)

by is authorized to enter into an agreement on behalf of this Corporation with the several Artists amending Subdivision (i) of Paragraph 3 of each of the contracts between United Artists Corporation and the several Artists dated February 5, 1919, so that said subdivision in each of said contracts shall read substantially as follows:

“And in addition to the above consideration, one thousand (1,000) shares of the common stock of the said corporation to be issued in the name of the said Artists in the form of nine (9) certificates, eight (8) of which shall be for one hundred and eleven (111) shares each, and one of which shall be for one hundred and twelve (112) shares, said certificates to be delivered in escrow to a person or corporation to be agreed upon by the parties hereto. Upon delivery by the said Artist to the said Corporation of each one of the first eight (8) photoplays called for by this contract, such escrow agent shall deliver to the said Artist one of said certificates for one hundred and eleven (111) shares and upon delivery by the said Artist to the said Corporation of the ninth photoplay called for hereunder such escrow agent shall deliver to the said Artists said certificate for one hundred and twelve (112) shares. Upon the expiration of the three-year period herein provided for, so many of said certificates as are then still held by

(Testimony of Dennis Francis O'Brien.)

such escrow agent in accordance with the provisions of this paragraph shall be delivered by such escrow agent to the said corporation."

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: Mr. Horner, in the interest of time, will you be willing to stipulate that these are excerpts from the minutes of the corporation on the dates on which they bear and may we introduce them in evidence as respective exhibits in order without identifying them?

Mr. Horner: Yes, Mr. Green. That is perfectly agreeable to me. I assume what you have in mind offering are exact copies of the ones that you have given me, and there are no additional ones?

Mr. Green: I have some additional ones here which I [119] will be glad to show you.

Mr. Horner: If you will do that, that will be all right. I have no objection.

Mr. Wright: May the stipulation, Mr. Horner, go further, that Mr. O'Brien would identify them as such?

Mr. Horner: Yes.

The Court: Very well. They may be identified briefly for the record and received, giving them the consecutive exhibit numbers.

The next one will be Exhibit 20.

Mr. Green: Exhibit 19 is a two-page document.

(Testimony of Dennis Francis O'Brien.)

The Clerk: The date is June 10, 1919. That is Exhibit No. 19.

Mr. Green: The next one would be an alphabetical list of the stockholders of the United Artists Corporation, March 1925.

The Court: That will be exhibit No. 20, and it may be received.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 20, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 20  
UNITED ARTISTS CORPORATION  
organized under the laws of Delaware  
Alphabetical List of Stockholders  
At closing of books on March 1925.

Name		Shares	
		Common	Preferred
Mary Pickford Fairbanks	Los Angeles, Cal.....	1000	300
Douglas Fairbanks	Los Angeles, Cal.....	1000	300
Charles Chaplin	Los Angeles, Cal.....	1000	300
D. W. Griffith, Inc.	Los Angeles, Cal.....	1000	300
Joseph M. Schenck	Los Angeles, Cal.....	1000	—
		5000	1500

Correct:

ALBERT H. T. BANZHAF.  
Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Horner: That should be 21, I think, your Honor. We just put a proxy in as No. 20, at least I thought you did.

Exhibit 19 is this document?

The Clerk: Yes. [120]

Mr. Horner: June 10, 1919.

No 20 is this list of stockholders of March, 1925?

Mr. Green: That is right.

Now, No. 21 will be a proxy executed by Charles Chaplin dated June 26, 1919.

The Court: It will be received as Petitioner's Exhibit No. 21.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 21, and made a part of this record.)

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## PETITIONER'S EXHIBIT No. 21

### United Artists Corporation Proxy

Know All Men By These Presents:

That I, Charles Chaplin, do hereby constitute and appoint Nathan Burkan to be my lawful attorney and substituted proxy for me and in my name, to vote upon all the stock held by me in United Artists Corporation, at a special meeting of shareholders of such corporation to be held on the 26th day of June, 1919, and at any adjourned meeting thereof, as fully and with the same effect as I

(Testimony of Dennis Francis O'Brien.)  
might or could do were I personally present at such meeting.

In Witness Whereof, I have hereunto set my hand and seal this 26th day of June, 1919.

CHARLES CHAPLIN

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next will be an adjourned stockholders' meeting, special meeting, of United Artists Corporation, dated "Held September 9, 1919," which is a three-page document.

The Court: It will be Exhibit No. 22.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 22, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 22

#### UNITED ARTISTS CORPORATION

##### Adjourned Stockholders' Special Meeting

Minutes of adjourned special meeting of United Artists Corporation, duly called and held at the office of the Corporation, No. 729 Seventh Avenue, New York City, on Sept. 9th, 1919, at four o'clock p.m., pursuant to adjournment duly taken at 3:05 o'clock p.m., on July 21st, 1919.

The Secretary reported that there were repre-

(Testimony of Dennis Francis O'Brien.)

sented by Dennis F. O'Brien, Nathan Burkan and Albert H. T. Banzhaf, as proxies, 4000 shares out of the entire issue of 5000 common shares outstanding and that the common stock of the Corporation is the only class of stock outstanding entitled to vote.

There being a quorum present, the Secretary read to the meeting the minutes of the special meeting of stockholders held June 26th, and of an adjourned meeting thereof held July 21st, of which said meetings this meeting is an adjournment, and said minutes were unanimously approved.

The Secretary presented and read the following resolutions which were adopted by the Board of Directors of the Corporation at a special meeting thereof held at No. 729 Seventh Avenue, New York City, on May 29, 1919:

“Whereas, in the judgment of the Board of Directors the photoplays agreed to be delivered to this Corporation under said contracts are necessary for the business of this corporation and constitute good and sufficient consideration for the issue of five thousand (5,000) shares of the common stock of this Corporation, the same being without par or nominal value:

“Resolved that, in consideration of the delivery of said contracts to this corporation, the proper officers of this Corporation be, and they hereby are, authorized to issue and deliver to William G. McAdoo, Esq., one thousand (1,000)

(Testimony of Dennis Francis O'Brien.)

shares of no par value of this Corporation fully paid and non-assessable, said shares to include the shares of no par value subscribed for by the signers of the certificate of incorporation of this Corporation, assignments of said subscriptions being held by him; and

“Resolved that, in consideration of the delivery of said contracts to this Corporation, the proper officers of this Corporation be, and they hereby are authorized to issue to said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) one thousand (1,000) shares of no par value each, making a total of four thousand (4,000) shares of no par value to a person or corporation to be agreed upon by said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this corporation, and to no other person, said four thousand (4,000) shares to be held by said person or corporation in escrow in accordance with the provisions of said contracts between said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this Corporation; and

“Resolved that the proper officers of this Corporation be, and they hereby are, authorized and directed to execute an escrow agree-

(Testimony of Dennis Francis O'Brien.)

ment for the holding and delivery of said four thousand (4,000) shares of non-par value in accordance with the terms and provisions of said contracts between said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this Corporation dated February 5th, 1919, said escrow agreement to provide that while said four thousand (4,000) shares are held in escrow, each of the aforesaid artists shall have the right to vote his or her respective holdings thereof; provided that said escrow agreement shall be approved by the general counsel of this Corporation before execution of the same by its officers."

Upon motion duly made, seconded and unanimously carried, it was

Resolved, that the shareholders of this corporation do hereby in all respects ratify, adopt and confirm the aforesaid resolutions of the Board of Directors and the action taken or to be taken thereunder by said Board, and do hereby consent to the issuance of the common stock of this corporation in the manner provided for in said resolutions.

(Signed)                      G. B. CLIFTON  
Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: Next is an alphabetical list of stockholders of the United Artists Corporation as of the close of the books on March 16, 1920.

The Court: That will be received as Petitioner's Exhibit 23.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 23, and made a part of this record.) [121]

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PETITIONER'S EXHIBIT No. 23  
UNITED ARTISTS CORPORATION  
COMPANY  
Organized  
Under the Laws of  
Delaware

Alphabetical List of Stockholders,  
At Closing of Books on the 16th day of March, 1920.

Name	Residence	Shares	
		Common	Preferred
Charles Chaplin	Los Angeles, Calif.....	1000	300
Douglas Fairbanks	Los Angeles, Calif.....	1000	300
David W. Griffith	720 Longacre Building.....	1000	300
	New York N Y		
Gladys Mary Moore	Los Angeles, California.....	1000	300
William G. McAdoo	120 Broadway .....	1000	
	New York N Y		
		<hr/> 5000	<hr/> 1200

Correct

G. B. CLIFTON  
Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: Next is a proxy executed by Charles Chaplin on the 18th day of March, 1920, the proxy being in favor of Nathan Burkan, B-u-r-k-a-n.

The Court: That will be received as Petitioner's Exhibit No. 24.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 24, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 24

##### Proxy

Know All Men By These Presents, that I the undersigned do hereby constitute and appoint Nathan Burkan my attorney and agent for me and in my name, place and stead to vote as my proxy at the annual meeting of the stockholders of United Artists Corporation to be held at No. 7 West 10th Street, Wilmington, Delaware, on the 5th day of April, 1920, at 3 o'clock in the afternoon, or any adjournment thereof, for the election of directors and officers, and to act upon any matter that may come before the said annual meeting, or any adjournment thereof, according to the number of votes I should be entitled to vote if then personally present at the said meeting.

(Testimony of Dennis Francis O'Brien.)

In Witness Whereof I have hereunto set my hand and seal this 18 day of March, 1920.

[Seal]

CHARLES CHAPLIN

Witness:

ALFRED REEVES

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

Mr. Green: The next is a ballot of stockholders, election of directors and officers, Nathan Burkan, 5,000 shares, proxy for Charles Chaplin.

The Court: It will be received as Petitioner's Exhibit No. 25.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 25, and made a part of this record.)

## PETITIONER'S EXHIBIT No. 25

### Ballot of Stockholders

#### Election of Directors and Officers

For Directors of United Artists Corporation

- |    |               |       |        |
|----|---------------|-------|--------|
| 1. | Nathan Burkan | 5000  | shares |
| 2. | .....         | ..... | shares |
| 3. | .....         | ..... | shares |
| 4. | .....         | ..... | shares |
| 5. | .....         | ..... | shares |

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an alphabetical list of stockholders of the United Artists Corporation on March 26, 1921.

The Court: It will be received as Petitioner's Exhibit No. 26.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 26, and made a part of this record.)

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### PETITIONER'S EXHIBIT No. 26

#### UNITED ARTISTS CORPORATION

organized under the Laws of Delaware

#### Alphabetical List of Stockholders

At closing of books on the 26th day of March, 1921

Name	Residence	Shares	
		Common	Preferred
Charles Chaplin	Los Angeles, Calif.....	1000	300
Douglas Fairbanks	Los Angeles, Calif.....	1000	300
Gladys Mary Fairbanks	Los Angeles, Calif.....	1000	300
D. W. Griffith, Inc.	New York City, N. Y.	1000	300
United Artists Corporation	New York City, N. Y.	1000	—
		<hr/> 5000	<hr/> 1200

Correct:

ALBERT H. T. BANZHAF

Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: Next is a waiver of notice of meeting dated New York April 3, 1922. [122]

The Court: It will be received as Petitioner's Exhibit 27.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 27, and made a part of this record.)

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## PETITIONER'S EXHIBIT No. 27

### Waiver of Notice of Meeting

We, the undersigned, being all of the stockholders of United Artists Corporation, do hereby consent that the time and place of holding the Annual Meeting of the said Corporation be changed from Monday, April 3rd, 1922, at 729 Seventh Avenue, Borough of Manhattan, City of New York, to April 10th, 1922, at the office of the Douglas Fairbanks Pictures Corporation, Hollywood, California, and we do hereby waive all notice whatsoever of the said Annual Meeting, and do hereby consent that the aforesaid time and place be and the same hereby is fixed as the time and place for holding the Annual Meeting of the Corporation, pursuant to the By-Laws, and that all such busi-

(Testimony of Dennis Francis O'Brien.)  
ness may be transacted thereat as may lawfully  
come before the said meeting.

Dated, New York, April 3rd, 1922.

MARY PICKFORD FAIRBANKS

DOUGLAS FAIRBANKS

CHARLES CHAPLIN

D. W. GRIFFITH, INC.

By ALBERT H. T. BANZHAF,  
Sec.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

---

Mr. Green: The next is a proxy executed by  
Charles Chaplin in favor of Nathan Burkan dated  
March 21, 1923.

The Court: It will be received as Petitioner's  
Exhibit No. 28.

(The said document, so offered and received  
in evidence, was marked Petitioner's Exhibit  
28, and made a part of this record.)

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# PETITIONER'S EXHIBIT No. 28

Know All Men By These Presents:

That I, Charles Chaplin do hereby constitute  
and appoint Nathan Burkan to be my lawful attor-  
ney, substitute and proxy for me and in my name,  
to vote upon all the stock held by me in United

(Testimony of Dennis Francis O'Brien.)

Artists Corporation at the Annual Meeting of Stockholders of such corporation to be held on the 2nd day of April, 1923, and at any adjourned meeting thereof, as fully and with the same effect as I might or could do were I personally present at such meeting, and I hereby revoke any proxy or proxies heretofore given by me to any person or persons whatsoever.

In Witness Whereof I have hereunto set my hand and seal this 21st day of March, 1923.

CHARLES CHAPLIN

In the presence of:

MAURICE G. CLEARY

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

---

Mr. Green: The next is a waiver of notice of meeting dated April 17, 1924, executed by Charles Chaplin by Nathan Burkan and others.

The Court: It will be received as Petitioner's Exhibit 29.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 29, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 29

##### Waiver of Notice of Meeting.

We, the undersigned, being all of the stockholders of the United Artists Corporation, do hereby consent that the time and place of holding the An-

(Testimony of Dennis Francis O'Brien.)

nual Meeting of the said corporation, be fixed as Monday, April 7th, 1924, at 729 Seventh Avenue, Borough of Manhattan, New York City, at the office of the United Artists Corporation, and we do hereby waive all notice whatsoever of the said Annual Meeting, and do hereby consent that the aforesaid time and place be and the same hereby is fixed as the time and place for holding the Annual Meeting of the Corporation, pursuant to the By-laws, and that all such business may be transacted thereat as may lawfully come before said meeting.

Dated, April 7, 1924.

MARY PICKFORD FAIRBANKS

By DENNIS F. O'BRIEN

DOUGLAS FAIRBANKS

By DENNIS F. O'BRIEN

D. W. GRIFFITH, INC.

By ALBERT H. T. BANZHAF

CHARLES CHAPLIN

By NATHAN BURKAN

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an alphabetical list of stockholders of the United Artists Corporation at the close of books on March 28, 1924.

The Court: It will be received as Petitioner's Exhibit No. 30. [123]

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 30, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

## PETITIONER'S EXHIBIT No. 30

UNITED ARTISTS CORPORATION  
organized under the laws of DelawareAlphabetical List of Stockholders  
At closing of books on March 28, 1924.

Name	Residence	Shares	
		Common	Preferred
Charles Chaplin	Los Angeles, Calif.....	1000	300
Douglas Fairbanks	Los Angeles, Calif.....	1000	300
Gladys Mary Fairbanks	Los Angeles, Calif.....	1000	300
D. W. Griffith, Inc.	New York City, N. Y.	1000	300
United Artists Corporation	New York City, N. Y.	1000	—
		<hr/> 5000	<hr/> 1200

Correct:

ALBERT H. T. BANZHAF.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an excerpt from minutes of special meeting of the board of directors of United Artists Corporation held at 729 7th Avenue, New York, dated September 5, 1924.

The Court: It will be received as Petitioner's Exhibit No. 31.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 31, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 31

(excerpt from "Minutes of a Special Meeting of Board of Directors of United Artists Corporation", held at 729 Seventh Avenue, New York, December 5, 1924.)

"Mr. O'Brien presented to the meeting an original copy of a certain agreement, dated November 22nd, 1924, by and between Mary Pickford Fairbanks, Charles Chaplin, Douglas Fairbanks, Joseph M. Schenck and United Artists Corporation. Copies of this contract had been in the possession of each of the members of the Board of Directors for several days, and it was announced to the meeting that each of the Directors was thoroughly familiar with such contract."

"A motion was made, seconded and unanimously adopted by a vote of the Directors (save and except Mr. Banzhaf, who did not vote because he stated he had not had an opportunity to submit it to Mr. Griffith) that the act of Dennis F. O'Brien, as Vice-President, in executing said contract, was approved, and that his act became the act of the corporation, and that the corporation accepted the aforesaid contract and that it should become part of the minutes of this meeting."

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an alphabetical list of the stockholders of United Artists Corporation at the closing of books on March 28, 1927.

The Court: It will be received as Petitioner's Exhibit No. 32.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 32, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 32

UNITED ARTISTS CORPORATION

Organized under the Laws of the State of Delaware

Alphabetical List of Stockholders

At closing of Books on March 28th, 1927.

Names	Residences	Shares	
		Common	Preferred
Charles Chaplin	Los Angeles, Calif.....	1000	300
Douglas Fairbanks	Los Angeles, Calif.....	1000	300
Mary Pickford Fairbanks	Los Angeles, Calif.....	1000	300
D. W. Griffith, Inc.	New York City, N. Y.	1000	300
Joseph M. Schenck	Los Angeles, Cal.....	1000	300
United Artists Corporation	New York City, N. Y.	1000	—

Correct:

ALBERT H. T. BANZHAF,  
Secretary.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an alphabetical list of the stockholders of United Artists Corporation at the closing of books on March 28, 1926.

The Court: It will be received as Petitioner's Exhibit No. 33. [124]

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 33, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 33

UNITED ARTISTS CORPORATION

organized under the laws of Delaware

Alphabetical List of Stockholders.

At closing of books on March 28th, 1926.

Names	Residence	Shares	
		Common	Preferred
Charles Chaplin	Los Angeles, Calif.....	1000	300
Douglas Fairbanks	Los Angeles, Calif.....	1000	300
Gladys Mary Fairbanks	Los Angeles, Calif.....	1000	300
D. W. Griffith, Inc.	New York City, N. Y.	1000	300
Joseph M. Schenck	Los Angeles, Calif.....		
United Artists Corporation	New York City, N. Y.	1000	—

Correct:

ALBERT H. T. BANZHAF  
Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an alphabetical list of the stockholders of United Artists Corporation at the closing of books on March 28, 1928.

The Court: It will be received as Petitioner's Exhibit No. 34.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 34, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 34

UNITED ARTISTS CORPORATION

Organized under the Laws of the State of Delaware

Alphabetical List of Stockholders.

At closing of Books on March 28th, 1928.

Names	Residences	Shares	
		Common	Preferred
Charles Chaplin	Los Angeles, Calif.....	1000	
Douglas Fairbanks	Los Angeles, Calif.....	1000	
Mary Pickford Fairbanks	Los Angeles, Calif.....	1000	
Gloria Swanson	Los Angeles, Calif.....	1000	
Joseph M. Schenck	Los Angeles, Calif.....	1000	
D. W. Griffith, Inc.	New York City, N. Y.	1000	
Sam Goldwyn	New York City, N. Y.	1000	
United Artists Corporation	New York City, N. Y.	1000	
Art Cinema Corporation	New York City, N. Y.	1000	

Correct:

ALBERT H. T. BANZHAF  
Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an excerpt from an adjourned annual meeting of the stockholders of United Artists Corporation, dated July 12, 1928.

The Court: It will be received as Petitioner's Exhibit No. 35.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 35, and made a part of this record.)

### PETITIONER'S EXHIBIT No. 35

(Excerpt from "Adjourned Annual Meeting of the Stockholders of the United Artists Corporation", July 12, 1928)

"There were present in person or by proxy the following stockholders representing the number of shares set opposite their respective names:

Name	Name of Proxy	No. of Shares
Douglas Fairbanks	Dennis F. O'Brien.....	1000 Shares
Mary Pickford Fairbanks (also known as Gladys Mary Fairbanks)		
Gloria Swanson	Clinton J. Scollard.....	1000 Shares
Joseph M. Schenck	Dennis F. O'Brien.....	1000 Shares
D. W. Griffith, Inc.	Albert H. T. Banzhaf.....	1000 Shares
Samuel Goldwyn	Guy P. Morgan.....	1000 Shares
Art Cinema Corporation	Bertram S. Nayfack.....	1000 Shares
Charles Chaplin	Charles Schwartz .....	1000 Shares

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an alphabetical list of the stockholders of United Artists Corporation dated March 28, 1930.

The Court: It will be received as Petitioner's Exhibit No. 36. [125]

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 36, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 36

UNITED ARTISTS CORPORATION

Organized under the Laws of the State of Delaware

Alphabetical List of Stockholders  
At closing of Books, March 28, 1930

Names	Residences	Shares Common Stock
Art Cinema Corporation	729 Seventh Avenue New York City.....	1000
Charles Chaplin	Los Angeles, Cal.....	1000
Douglas Fairbanks	Los Angeles, Cal.....	1000
Mary Pickford Fairbanks	Los Angeles, Cal.....	1000
Samuel Goldwyn	Los Angeles, Cal.....	1000
D. W. Griffith	Los Angeles, Cal.....	500
D. W. Griffith, Inc.	New York City.....	500
Joseph M. Schenck	Los Angeles, Cal.....	1000
Gloria Swanson	Los Angeles, Cal.....	1000
United Artists Corporation	New York City.....	1000

Correct:

ALBERT H. T. BANZHAF  
Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an excerpt from minutes of an adjourned annual stockholders' meeting of United Artists Corporation, May 7, 1929.

The Court: It will be received as Petitioner's Exhibit 37.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 37, and made a part of this record.)

### PETITIONER'S EXHIBIT No. 37

(Excerpt from "Minutes of Adjourned Annual Stockholders Meeting of the United Artists Corporation, May 7, 1929")

"There were present in person or by proxy the following stockholders representing the number of shares set opposite their respective names:

Name	Name of Proxy	No. of Shares
Douglas Fairbanks	Dennis F. O'Brien.....	1000 shares
Mary Pickford Fairbanks (also known as Gladys Mary Fairbanks)	Dennis F. O'Brien.....	1000 shares
Gloria Swanson	Christopher J. Dunphy	1000 shares
Joseph M. Schenck	In Person .....	1000 shares
D. W. Griffith, Inc.	Albert H. T. Banzhaf....	500 shares
D. W. Griffith	Albert H. T. Banzhaf	
Samuel Goldwyn	James A. Mulvey.....	1000 shares
Art Cinema Corporation	Bertram S. Nayfaack.....	1000 shares
Charles Chaplin	Nathan Burkan .....	1000 shares"

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an alphabetical list of the stockholders of United Artists Corporation at the closing of books on March 28, 1929.

The Court: It will be received as Petitioner's Exhibit 38.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 38, and made a part of this record.)

# PETITIONER'S EXHIBIT No. 38

## UNITED ARTISTS CORPORATION

Organized under the Laws of the State of Delaware

### Alphabetical List of Stockholders

At Closing of Books on March 28, 1929

Names	Residence	Shares	
		Common	Preferred
Art Cinema Corporation	Los Angeles, Calif.....	1000	1000
Charles Chaplin	Los Angeles, Calif.....	1000	1000
Douglas Fairbanks	Los Angeles, Calif.....	1000	
Mary Pickford Fairbanks	Los Angeles, Calif.....	1000	300
Samuel Goldwyn	New York City, N. Y.	1000	1000
D. W. Griffith	New York City, N. Y.	500	
D. W. Griffith, Inc.	New York City, N. Y.	500	1000
Joseph M. Schenck	Los Angeles, Calif.....	1000	1000
Gloria Swanson	Los Angeles, Calif.....	1000	
United Artists Corporation	New York City, N. Y.	1000	
Elton Corporation			1000
Pickford Corporation			700

Correct:

ALBERT H. T. BANZHAF  
Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an alphabetical list of the stockholders of United Artists Corporation at the closing of books on March, 1933.

The Court: It will be received as Petitioner's Exhibit No. 39.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 39, and made a part of this record.) [126]

## PETITIONER'S EXHIBIT No. 39

### UNITED ARTISTS CORPORATION

Organized under the Laws of the State of Delaware

#### Alphabetical List of Stockholders

At Closing of Books March 1933.

Names	Residence	Shares Common Stock
Art Cinema Corporation	729 Seventh Avenue New York City.....	1000
Charles Chaplin	1416 LaBrea Avenue Hollywood, Calif. ....	1000
The Elton Corporation	c/o Douglas Fairbanks Pictures Corporation P. O. Box Hollywood, Calif. ....	1000
Samuel Goldwyn	United Artists Studios 1041 North Formosa Ave. Hollywood, Calif. ....	1000
D. W. Griffith	1619 Broadway New York City.....	500
D. W. Griffith, Inc.	1619 Broadway New York City.....	500

(Testimony of Dennis Francis O'Brien.)

Names	Residence	Shares Common Stock
The Pickford Corporation	United Artists Studios 1041 North Formosa Ave. Hollywood, Calif. ....	1000
Joseph M. Schenck	United Artists Studios 1041 North Formosa Ave. Hollywood, Calif. ....	1000

Correct:

HARRY J. MULLER (in pencil)  
Ass't Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an excerpt from minutes of the special meeting of the board of directors of United Artists Corporation, dated August 25, 1932.

The Court: It will be received as Petitioner's Exhibit No. 40.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 40, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 40

(Excerpt from "Minutes of a Special Meeting of the Board of Directors of United Artists Corporation", August 25, 1932)

"It was stated to the meeting that the financial records of the corporation show that at the time of the execution of the aforesaid agreement dated November 22, 1924, all of the pre-

(Testimony of Dennis Francis O'Brien.)

ferred and common stock of the United Artists Corporation then outstanding, was owned by Mary Pickford Fairbanks, Douglas Fairbanks, Charles Chaplin, David W. Griffith and D. W. Griffith, Inc., subject to certain then existing escrow agreements pertaining to the common stock."

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an alphabetical list of stockholders of United Artists Corporation at the closing of books on March 27, 1932.

The Court: It will be received as Petitioner's Exhibit No. 41.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 41, and made a part of this record.)

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## PETITIONER'S EXHIBIT No. 41

### UNITED ARTISTS CORPORATION

Organized under the Laws of the State of Delaware

Alphabetical List of Stockholders.  
At Closing of Books, March 7, 1932.

Names	Residences	Shares Common Stock
Art Cinema Corporation	729 Seventh Avenue, New York City.....	1000
Charles Chaplin	Los Angeles, California....	1000
Douglas Fairbanks	Los Angeles, California....	1000
Mary Pickford Fairbanks	Los Angeles, California....	1000

(Testimony of Dennis Francis O'Brien.)

Names	Residences	Shares Common Stock
Samuel Goldwyn	Los Angeles, California....	1000
D. W. Griffith	New York City.....	500
D. W. Griffith, Inc.	New York City.....	500
Joseph M. Schenck	Los Angeles, California....	1000
Gloria Swanson	Los Angeles, California....	1000
United Artists Corporation	New York City.....	1000

Correct:

ALBERT H. T. BANZHAF  
Secretary

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an excerpt from the minutes of regular meeting of the executive committee of United Artists Corporation, dated October 25, 1935.

The Court: It will be received as Petitioner's Exhibit No. 42.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 42, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 42

(Excerpt from page 13 of "Minutes of Regular Meeting of the Executive Committee of the United Artists Corporation held at the offices of the corporation at 729 Seventh Ave-

(Testimony of Dennis Francis O'Brien.)

nue, New York City, on the 25th day of October, 1935, at 10:30 A.M.'')

“(a) Two checks payable to Charles Chaplin in the amount of \$22,763.61 each, each check representing escrow dividends on 167 shares of common stock in the amount of \$22,266.11 and accumulated interest of \$497.50 had been delivered to Mr. Nathan Burkan October 16, 1935.”

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an excerpt from minutes of [127] an adjourned annual meeting of the stockholders of United Artists Corporation held July 1, 1935.

The Court: It will be received as Petitioner's Exhibit No. 43.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 43, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 43

(Excerpt from “Minutes of Adjourned Annual Meeting of the Stockholders of United Artists Corporation held on July 1, 1935.”)

We, the undersigned, being the owners of all the common stock of United Artists Corporation,

(Testimony of Dennis Francis O'Brien.)

do hereby consent to the adjournment of the annual meeting of the stockholders of United Artists Corporation from the principal office of the corporation, No. 729 Seventh Avenue, New York City, New York, to the United Artists Studios, No. 1041 North Formosa Avenue, Hollywood, California, and to be held at that place on the 8th day of July, 1935 at 9 A.M. o'clock Pacific Coast Time, for all purposes and for the transaction of all business that may lawfully come before such meeting.

(signed) MARY PICKFORD

FAIRBANKS

The Pickford Corporation

—Owner of 1000 shares

CHARLES CHAPLIN

Charles Chaplin

—Owner of 1000 shares

DOUGLAS FAIRBANKS

The Elton Corporation

—Owner of 1000 shares

SAMUEL GOLDWYN

Samuel Goldwyn

—Owner of 1000 shares''

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next will be an excerpt from minutes of the adjourned annual meeting of the stockholders of United Artists Corporation held July 8, 1935.

(Testimony of Dennis Francis O'Brien.)

The Court: It will be received as Petitioner's Exhibit No. 44.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 44, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 44

(Excerpt from "Minutes of Adjourned Annual Meeting of the Stockholders of United Artists Corporation Held on July 8, 1935.")

"The meeting was called to order by Mary Pickford Fairbanks. There were present the following stockholders:

The Pickford Corporation

by Mary Pickford Fairbanks

(proxy)

1000 shares

The Elton Corporation

by Douglas Fairbanks (proxy)

1000 shares

Charles Chaplin

1000 shares

Samuel Goldwyn

1000 shares"

(Testimony of Dennis Francis O'Brien.)

“Minutes Approved:

(signed)

MARY PICKFORD

FAIRBANKS (proxy)

The Pickford Corporation

—Owner of 1000 shares

CHARLES CHAPLIN

Charles Chaplin

—Owner of 1000 shares

R. FAIRBANKS proxy

The Elton Corporation

—Owner of 1000 shares

SAMUEL GOLDWYN

Samuel Goldwyn

—Owner of 1000 shares”

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an excerpt from reconvened meeting of stockholders of United Artists Corporation held on July 12, 1935.

The Court: It will be received as Petitioner's Exhibit No. 45.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 45, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 45

(Excerpt from "Reconvened Meeting of Stockholders of United Artists Corporation Held on July 12, 1935, at 9:30 o'clock in the Forenoon".)

"The Meeting was called to order by Mary Pickford Fairbanks. There were present the following stockholders:

The Pickford Corporation

by Mary Pickford Fairbanks

(proxy)

1000 shares

The Elton Corporation

by Robert Fairbanks (proxy)

1000 shares

Charles Chaplin

1000 shares

Samuel Goldwyn

1000 shares"

"Minutes Approved:

(signed)

MARY PICKFORD  
FAIRBANKS

The Pickford Corporation

Owner of 1000 shares

R. FAIRBANKS

The Elton Corporation Pres

Owner of 1000 shares

CHARLES CHAPLIN

Charles Chaplin

Owner of 1000 shares

SAMUEL GOLDWYN

Samuel Goldwyn

Owner of 1000 shares"

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Green: The next is an excerpt from meeting of the Board of directors of United Artists Corporation held July 12, 1935. [128]

The Court: It may be received as Petitioner's Exhibit No. 46.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 46, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 46

(Excerpt from "Meeting of the Board of Directors of the United Artists Corporation held at the office of the corporation 1041 North Formosa Avenue, Hollywood, California, on July 12, 1935, at 11:00 o'clock in the forenoon")

"It was regularly moved, seconded and unanimously adopted that the President of the Company be authorized to enter into a five (5) year contract with The Elton Corporation, The Pickford Corporation, Charles Chaplin and Samuel Goldwyn, wherein and whereby it agrees to distribute pictures produced by each of the said stockholders or co-produced by said stockholders, or in which either Charles Chaplin, Douglas Fairbanks or Mary Pickford Fairbanks appear personally portraying prominent roles, and on the further agreement that

(Testimony of Dennis Francis O'Brien.)

each of said parties shall have the right to distribute the maximum of twelve (12) photo-plays a year through the facilities of the United Artists Corporation, terms to be substantially the same terms as now exist for so-called stockholder producers.

"It was regularly moved, seconded and unanimously adopted that as soon as Mr. Chaplin executes the aforesaid five (5) year contract, there shall be forthwith delivered to him the stock held in escrow by Dennis F. O'Brien pursuant to the old distribution agreement, and that the Treasurer of the corporation be directed to pay over to Mr. Chaplin any accrued dividends on said stock."

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The section of the minutes of the board of directors of United Artists Corporation held August 19, 1935.

The Court: It will be received as Petitioner's Exhibit No. 47.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 47, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 47

(Excerpt from "Minutes of Special Meeting of the Board of Directors of United Artists Corporation, Held on Monday, August 19th, 1935, at the Hour of 4:30 o'Clock P.M.)

"The Secretary called attention of the Board to the fact that at the last meeting of the stockholders there had been discussed and approved, the question of releasing to Charles Chaplin any and all stock of this corporation now held in escrow, as well as all escrowed dividends. Whereupon, it was moved, seconded, and unanimously carried as follows:

Resolved, that United Artists Corporation immediately deliver to Charles Chaplin any and all stock of this corporation held in escrow, as well as all dividends escrowed, which stock and dividends have been escrowed pending the delivery to this corporation of further photoplays to be released by the said Charles Chaplin.

Be it further

Resolved, that the attorneys, officers and agents of this corporation be, and they are hereby instructed to notify the escrow holder of this action of the Board, and instruct him to deliver said capital stock and accumulated dividends to the said Charles Chaplin.

(Testimony of Dennis Francis O'Brien.)

Be it further

Resolved, that the officers, agents and employees of this corporation be, and they are hereby directed, empowered and instructed to do any and all other things necessary, desirable or requisite to accomplish the purpose of the above resolution."

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an excerpt from special meeting of the stockholders of United Artists Corporation held on September 5, 1935.

The Court: It will be received as Petitioner's Exhibit No. 48.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 48, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 48

(Excerpts from "Minutes of Special Meeting of the Stockholders of United Artists Corporation, held on Thursday, September 5th, 1935, at the hour of 3:00 o'clock p.m., at 1041 North Formosa Avenue, Hollywood, California.")

"The Meeting was called to order by Vice-President Mary Pickford.

(Testimony of Dennis Francis O'Brien.)

There were present the following stockholders:

The Pickford Corporation, by Mary Pickford Fairbanks, proxy, 1000 shares;

The Elton Corporation, by Robert Fairbanks, proxy, 1000 shares;

Charles Chaplin, 1000 shares;

Samuel Goldwyn, 1000 shares."

The Foregoing Minutes are approved and adopted by the undersigned stockholders.

(signed)

MARY PICKFORD

The Pickford Corporation

—Owner of 1000 shares

CHARLES CHAPLIN

Charles Chaplin

—Owner of 1000 shares

R. FAIRBANKS

The Elton Corporation Proxy

—Owner of 1000 shares

SAMUEL GOLDWYN

Samuel Goldwyn

—Owner of 1000 shares"

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an excerpt from minutes of special meeting of the stockholders of United Artists Corporation held January 3, 1936.

(Testimony of Dennis Francis O'Brien.)

The Court: It will be received as Petitioner's Exhibit No. 49. [129]

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 49 and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 49

(Excerpt from "Minutes of Special Meeting of Stockholders of United Artists Corporation", January 3, 1936)

"We, the undersigned, being the owners of all the common stock of United Artists Corporation, do hereby consent to the holding of special meeting of the stockholders of United Artists Corporation, at the Los Angeles office of said corporation, 1041 North Formosa Avenue, on the 3rd day of January, 1936, said meeting having been duly called by the Secretary of the corporation as required by the By-Laws, for all purposes and for the transaction of all business that may lawfully come before such meeting, and we do hereby ap-

(Testimony of Dennis Francis O'Brien.)

prove the foregoing as a true and correct recitation of the proceedings had at said meeting.

(signed)

MARY PICKFORD

The Pickford Corporation

—Owner of 1000 shares

CHARLES CHAPLIN

Charles Chaplin

—Owner of 1000 shares

DOUGLAS FAIRBANKS

The Elton Corporation

—Owner of 1000 shares

SAMUEL GOLDWYN

Samuel Goldwyn

—Owner of 1000 shares

.....

Alexander Korda.

—Owner of ... shares''

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

—————

Mr. Green: The next is an excerpt—it is a waiver of meetings of special meeting of stockholders of United Artists Corporation held January 14, 1936.

The Court: It will be received as Petitioner's Exhibit No. 50.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 50, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 50

“Minutes of Special Meeting of Stockholders of  
United Artists Corporation.

WAIVER.

We, the undersigned, being the owners of all the common stock of United Artists Corporation, do hereby waive notice of a special meeting of the stockholders of said United Artists Corporation, to be held at 1041 North Formosa Avenue, Los Angeles, California, on the 14th day of January, 1936, at the hour of 1:30 o'clock P.M., and consent to the holding of the same for all purposes, and for the transaction of all business that may lawfully come before such meeting, and we do hereby ap-

(Testimony of Dennis Francis O'Brien.)

prove the following as a true and correct recitation of the proceedings had at said meeting.

(signed) MARY PICKFORD

The Pickford Corporation

—Owner of 1000 shares

CHARLES CHAPLIN

Charles Chaplin

—Owner of 1000 shares

DOUGLAS FAIRBANKS

The Elton Corporation

—Owner of 1000 shares

SAMUEL GOLDWYN

Samuel Goldwyn

—Owner of 1000 shares

.....

Alexander Korda

—Owner of ... shares''

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

—————

Mr. Green: The next will be minutes of reconvened meeting of stockholders of United Artists Corporation held on July 10, 1935.

The Court: It will be received as Petitioner's Exhibit No. 51.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 51, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 51

“Reconvened Meeting of Stockholders of United Artists Corporation Held on July 10, 1935,  
at 11:00 o’Clock in the Forenoon

The meeting was called to order by Mary Pickford Fairbanks. There were present the following stockholders:

The Pickford Corporation	
by Mary Pickford Fairbanks	
(proxy)	1000 shares
The Elton Corporation	
by Douglas Fairbanks (proxy)	1000 shares
Charles Chaplin	1000 shares
Samuel Goldwyn	1000 shares

On motion duly made, seconded and unanimously adopted, Mary Pickford Fairbanks was selected as Chairman of the meeting and Mr. Nathan Burkan as Secretary.

The Chairman then called the meeting for the election of officers. The following were nominated for the respective offices after their name:

Al Lichtman, President  
Mary Pickford Fairbanks, First Vice-President  
Harry D. Buckley, Second Vice-President  
Arthur W. Kelly, Third Vice-President  
Harry Muller, Treasurer  
Lloyd Wright, Secretary  
Harry Muller, Assistant Secretary  
Edward C. Raftery, Assistant Secretary

(Testimony of Dennis Francis O'Brien.)

On motion duly made, seconded and unanimously adopted, it was directed that the Secretary cast a ballot for the election of the foregoing officers.

There being no further business to come before the meeting it was adjourned until Friday, July 12, 1935, at 9:30 A.M.

(signed) NATHAN BURKAN  
Secretary

Minutes Approved:

(signed) MARY PICKFORD

FAIRBANKS proxy

The Pickford Corporation

—Owner of 1000 shares

R. FAIRBANKS proxy

The Elton Corporation

—Owner of 1000 shares

CHARLES CHAPLIN

Charles Chaplin

—Owner of 1000 shares

SAMUEL GOLDYN

Samuel Goldwyn

—Owner of 1000 shares”

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

—————

Mr. Green: The next is minutes of reconvened meeting of stockholders of United Artists Corporation held on July 9, 1935.

The Court: It will be received as Petitioner's Exhibit No. 52. [130]

(Testimony of Dennis Francis O'Brien.)

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 52, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 52

"Reconvened Meeting of Stockholders of United Artists Corporation Held on July 9th, 1935.

There were present the following stockholders:

The Pickford Corporation

by Mary Pickford Fairbanks  
(proxy)

1000 shares

The Elton Corporation

by Douglas Fairbanks (proxy)

1000 shares

Charles Chaplin

1000 shares

Samuel Goldwyn

1000 shares

The Chairman, Mary Pickford Fairbanks called the meeting to order. Mr. Nathan Burkan continued as Secretary of the meeting. After a general discussion of the business of the corporation it was moved, seconded and unanimously adopted

(Testimony of Dennis Francis O'Brien.)  
that the meeting adjourn to Wednesday, July 10th,  
1935 at 9:30 A.M.

(signed) NATHAN BURKAN

Approved:

(signed)

MARY PICKFORD

FAIRBANKS proxy

The Pickford Corporation

—Owner of 1000 shares

CHARLES CHAPLIN

Charles Chaplin

—Owner of 1000 shares

R. FAIRBANKS Proxy

The Elton Corporation

—Owner of 1000 shares

SAMUEL GOLDWYN

Samuel Goldwyn

—Owner of 1000 shares''

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next one is an excerpt from minutes of first meeting of incorporators of United Artists Corporation held April 24, 1919.

The Court: It will be received as Petitioner's Exhibit No. 53.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 53, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 53

UNITED ARTISTS CORPORATION

Incorporators

First Meeting      April 24, 1919

Sept. 9, 1919

Adjourned Special Meeting of Stockholders  
of United Artists

Resolved that the proper officers of this corporation be and they hereby are authorized and directed to execute an escrow agreement for the holding and advancing of said 4,000 shares of non par value in accordance with the terms and provisions of said contract between said Charles Chaplin, Douglas Fairbanks, David W. Griffith and Gladys Mary Moore (professionally known as Mary Pickford) and this corporation dated February 5, 1919.

Said escrow agreement to provide that while said 4,000 shares are held in escrow each of the aforesaid artists shall have the right to vote his or her respective holdings thereof; provided that said escrow agreement shall be approved by the general counsel of this corporation before execution of same by its officers.

Upon motion duly made, seconded and unanimously carried it was

Resolved that the shareholders of this corporation do hereby in all respects ratify a draft and

(Testimony of Dennis Francis O'Brien.)

confirm the aforesaid resolutions of the Board of Directors and the action taken or to be taken thereunder by said Board and do hereby consent to the issuance of the Common Stock of this corporation in the manner provided for in said resolutions.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: The next is an excerpt from minutes of a special meeting of the board of directors held on August 19, 1935.

The Court: It will be received as Petitioner's Exhibit No. 54.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 54, and made a part of this record.)

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#### PETITIONER'S EXHIBIT No. 54

(Excerpt from "Minutes of Special Meeting of the Board of Directors of United Artists Corporation, held on Monday, August 19th, 1935, at the hour of 4:30 o'clock p.m.")

"The Secretary called attention of the Board to the fact that at the last meeting of the stockholders there had been discussed and approved, the question of releasing to Charles

(Testimony of Dennis Francis O'Brien.)

Chaplin any and all stock of this corporation now held in escrow, as well as all escrowed dividends. Whereupon, it was moved, seconded and unanimously carried, as follows:

Resolved, that United Artists Corporation immediately deliver to Charles Chaplin any and all stock of this corporation held in escrow, as well as all dividends escrowed, which stock and dividends have been escrowed pending the delivery to this corporation of further photoplays to be released by the said Charles Chaplin.

Be it further

Resolved, that the attorneys, officers and agents of this corporation be, and they are hereby instructed to notify the escrow holder of this action of the Board, and instruct him to deliver said capital stock and accumulated dividends to the said Charles Chaplin.

Be it further

Resolved, that the officers, agents and employees of this corporation be, and they are hereby directed, empowered and instructed to do any and all other things necessary, desirable or requisite to accomplish the purpose of the above resolution."

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

(Testimony of Dennis Francis O'Brien.)

Mr. Horner: If the Court please, I would like to immediately withdraw the last exhibit for the purpose of making copies for myself and Mr. Green. It seems to be the only copy we have.

The Court: Very well. You may do so.

Mr. Horner: I will furnish it to the Clerk before [131] the proceedings close.

Mr. Green: If your Honor please, I have one other exhibit I would like to offer in evidence, but it will be necessary for me to withdraw the original minutes from the minute book. May I be privileged to do that after the noon recess?

The Court: Very well.

Q. (By Mr. Green) Mr. O'Brien, I will show you a copy of a letter dated March 7, 1919, from John Fairbanks, treasurer, upon Douglas Fairbanks Pictures Corporation stationery, and addressed to Mr. Dennis F. O'Brien, 1482 Broadway, New York City, which contains a copy of a letter from Mr. John Fairbanks, dated March 5, 1919, to Honorable William G. McAdoo. I will ask you if you are the Mr. Dennis F. O'Brien referred to in that letter of March 7th?

A. (Examining document.) I am.

Q. Did you receive that letter from Mr. John Fairbanks on or about the date it bears?

A. I did.

Q. And did the letter that you received have enclosed with it a copy of Mr. Fairbanks' letter to Honorable William G. McAdoo dated March 5, 1919?

A. It did.

(Testimony of Dennis Francis O'Brien.)

Q. And the shares of stock therein referred to are preferred and common shares of stock of United Artists Corporation, are [132] they not?

A. They are.

Mr. Green: I would like to offer this in evidence as Petitioner's Exhibit next in order.

Mr. Horner: May I have just a moment? I haven't seen this before, and I would like to look at it first.

Mr. Green, may I ask the purpose of offering this particular document?

Mr. Green: Yes.

The purpose of offering this document is to show that each one of these five individuals, which contemplated William S. Hart at that time, was going to purchase \$100,000 worth of preferred stock in the corporation, and also, quoting from the letter itself, "and they were to get 1,000 shares each of common stock for signing the contract, thereby having the controlling interest in the corporation."

I propose to show that that 1,000 shares of each of common stock for signing the contract is the 1,000 shares of stock, Petitioner's Exhibit 4, that Mr. Chaplin received for executing Petitioner's Exhibit 5 in this case.

If your Honor please, it is further evidence of the consideration which the corporation received for the execution of this 1,000 shares of stock to Mr. Chaplin.

Mr. Horner: If your Honor please, I think I

(Testimony of Dennis Francis O'Brien.)

shall [133] object to the document being received in evidence. It is written by a man who is not in court, and there is some expression of opinion in here which seems to me to be in the nature of a conclusion and bears very vitally upon the very issue in this case.

The Court: Well, it will not be binding upon us. I think it probably is competent evidence for a limited purpose, at least.

Mr. Horner: The writer, you understand, of course, is not here, and probably won't be here.

The Witness: He is dead, John is.

Mr. Horner: Yes.

It seems to me the communication is inadmissible for that reason.

The Court: It will not be taken in as proof of any facts to which it may relate, but it is simply showing a part of the chain of events leading up to the organization of Petitioner. It will be received as Petitioner's Exhibit No. 55. The objection will be overruled.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 55, and made a part of this record.)

(Testimony of Dennis Francis O'Brien.)

PETITIONER'S EXHIBIT No. 55

DOUGLAS FAIRBANKS PICTURES  
CORPORATION

Hollywood, California

March 7, 1919

Mr. Dennis F. O'Brien  
1482 Broadway  
New York City

Dear Cap:

Enclosed find copy of a letter written and delivered to Mr. McAdoo as he was leaving California for New York. As you are to be one of the directors of the new distributing corporation, will you please use your very best endeavor to see that the provisions of this letter are carried out.

Thanking you, as ever,

Sincerely,

JNO FAIRBANKS

Treasurer.

DOUGLAS FAIRBANKS PICTURES  
CORPORATION

Hollywood, California

Office of the Treasurer—Copies

March 5, 1919

Honorable William G. McAdoo

Santa Fe Train No. 2 enroute

to New York, Car No. 31

Dear Mr. McAdoo:

At a conference between the four stars yesterday, a very essential matter pertaining to the new organ-

(Testimony of Dennis Francis O'Brien.)

ization was discussed and they desired me to present same to you.

It was the original understanding that there would be five stars in the combine prior to Mr. Hart's withdrawal. At that time the plan was that there be nine-thousand (9000) shares of common stock with no par value and five-thousand (5000) shares of preferred stock which was to be subscribed for at \$100.00 per share. Each one of the five stars were to subscribe for one-hundred thousand dollars (\$100,000.00) worth of this preferred stock and they were to get one thousand (1000) shares each of common stock for signing the contract, thereby having the controlling interest in the corporation. Mr. Hart having withdrawn from the combine, it has been agreed by the remaining four artists that they take over the \$100,000.00 worth of preferred stock left by Mr. Hart in equal shares of \$25,000.00 each, making a total of preferred stock to each artist of \$125,000.00 and that therefore, they should receive an additional amount of two hundred and fifty (250) shares of common stock each, making a total to each artist of twelve hundred and fifty (1250) shares of common stock, thereby keeping control of the corporation in their own hands at all times.

They desired me to make this point clear to you so that there might be no misunderstanding when Mr. Cotton draws up the agreement and I trust same will meet with your approval.

Please accept my sincerest sympathy over your

(Testimony of Dennis Francis O'Brien.)

recent loss and trust that your daughter and her baby will continue to improve right along.

With best wishes for Mrs. McAdoo and yourself for a safe and pleasant journey and hoping that you will be back in California in the very near future, I remain,

Very sincerely,

(signed) JOHN FAIRBANKS

Treasurer.

JF:HG

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: That is all, Mr. O'Brien.

If Your Honor please, that is all of the questions of Mr. O'Brien at this time, but may we be privileged to recall [134] him at a later date?

The Court: Yes.

Off the record.

(Discussion outside the record.)

The Court: On the record.

We will suspend at this time until 2:00 p. m.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 2:00 o'clock p. m. of the same date.) [135]

Afternoon Session

2:00 P. M.

The Court: Proceed.

DENNIS F. O'BRIEN

the witness on the stand at the time of recess, resumed the stand, and further testified as follows:

Direct Examination

(Continued)

Q. (By Mr. Green) Mr. O'Brien, I show you a minute book of United Artists Corporation covering the year 1930, and I would like to call your particular attention to minutes of a special meeting of the board of directors of United Artists Corporation held on August 6, 1930, at which there were present the following directors: Dennis F. O'Brien, Albert H. T. Banzhaf, James A. Mulvey, Bertram S. Navage, Nathan Burkan, Harry D. Buckley, and Christopher J. Dunfy, particularly now to page 2, where it recites that "the chairman then stated that the meeting had been called for the purpose of authorizing Mr. Dennis F. O'Brien to execute an affidavit with regard to the ownership by the United Artists Corporation of the shares of stock of United Artists Corporation, Ltd., the English subsidiary of the United Artists Corporation."

Now, following that statement is this resolution: "Resolved, that the act of Mr. Dennis F. O'Brien on July 25, 1930 in signing an affidavit setting forth the facts with respect to the ownership of stock of the United Artists [136] Corporation, Ltd., the English subsidiary corporation of this company,

(Testimony of Dennis Francis O'Brien.)

being the same, is hereby ratified and approved in all respects. A copy of said affidavit signed by Mr. Dennis F. O'Brien was directed to be filed with the minutes of this meeting."

Now, I will show you an executed affidavit bearing the date of July 25, 1930, signed by Dennis F. O'Brien, and I will ask you if that is the affidavit that you prepared on that occasion.

A. It is.

Q. And this is the affidavit that was placed in the minute book of the corporation immediately following the minutes to which I have just referred?

A. That is correct.

Q. And this affidavit relates to the matters recited in those minutes, does it not?

A. Yes.

Q. And this affidavit also relates to the issuance and ownership of the shares of common stock of the United Artists Corporation, does it not?

A. Yes, sir.

Mr. Green: If your Honor please, at this time I offer the affidavit in evidence as Petitioner's Exhibit next in order, and I would like to make this suggestion in connection with the offer, that there are only two para- [137] graphs in the affidavit which I consider material. I would prefer to read those two paragraphs into the record rather than offering the entire affidavit.

Mr. Horner: I would like to object to the admission in evidence of the offer, your Honor, on the grounds that it is irrelevant and immaterial, and

(Testimony of Dennis Francis O'Brien.)

the affidavit in question relates to an English tax in controversy with the Government of Great Britain, and it contains an expression of opinion of Mr. O'Brien which your Honor ruled out this morning, namely, about the ownership of stock. I am confident, of course, that it is a resolution as he has read it, and I have no quarrel with the best evidence rule, or anything of that kind.

Mr. Green: If your Honor please, in Petitioner's Exhibits that have already been offered in evidence in this case there are many references to the owners of the common shares of stock of United Artists Corporation. In fact, many of those exhibits specifically recite who the owners are and use the word "ownership" in connection with them. Now, these portions of the affidavit to which I have referred, paragraphs 9 and 10 bear on this same subject matter. Not only that, if your Honor please, the affidavit also relates to the fact that the shares of stock when issued were deposited as security for the performance of the contract. Now, that is just exactly what Petitioner [138] claims happens in this case. In the affidavit it recites that it was made on behalf of United Artists Corporation and as its act. Consequently, I claim that is highly material and since other evidence has already been introduced regarding the same facts, I can't see but what it is competent evidence.

Another thing, Mr. Horner, I believe you will find that the affidavit relates to the ownership of certain shares of stock and does not relate to a tax situa-

(Testimony of Dennis Francis O'Brien.)

tion. That is the substance of the affidavit, as I construe it.

Mr. Horner: I may have been partly wrong in stating it related to a controversy with England over taxes, but it does relate to a controversy with the country of Great Britain, and, as I read the affidavit, does contain an expression of Mr. O'Brien's opinion about ownership.

The Witness: May I explain that, your Honor?

The Court: No. Not at this time.

Well, I indicated this morning that I couldn't see very much relevancy or any reason for accepting an affidavit of the very witness that we have present here at the hearing, but inasmuch as it is a part of the minutes of the corporation it might have a limited evidentiary value, though, as I stated this morning, a statement of any witness to the ultimate fact which we ourselves must find is not very helpful. His opinion that somebody had the [139] ownership of the stock is perhaps not very helpful. What we will have to do is find what the facts actually are and from that make our own conclusion.

Mr. Green: Yes, I appreciate that, your Honor.

The Court: Well, it was marked this morning as Petitioner's Exhibit No. 16. It will be received in evidence as Petitioner's Exhibit No. 16 for a rather limited purpose.

Mr. Horner: May I have an exception to your Honor's ruling?

The Court: An exception may be noted.

Mr. Horner: Mr. Green has just tendered two

(Testimony of Dennis Francis O'Brien.)

paragraphs. I think the whole affidavit ought to go in, if any part of it goes in.

The Court: There was a copy handed to the Clerk this morning and marked as Petitioner's Exhibit No. 16 for identification.

Mr. Green: It will now be Petitioner's No. 16.

The Court: We will receive it for a limited purpose.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 16, and made a part of this record.)

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## PETITIONER'S EXHIBIT No. 16

Affidavit of Mr. Dennis F. O'Brien

State of New York

County of New York—ss.

I, Dennis F. O'Brien, a Counsellor and Attorney-at-law, of 152 West 42nd Street, New York City, New York, U.S.A., being first duly sworn, on oath depose and state as follows:

1. I am both a Director of and the Attorney-at-law for the United Artists Corporation, a company incorporated under the Laws of the State of Delaware, U.S.A., and hereinafter called "the American Company", and am also a Director of the Allied Artists Corporation, Ltd., the registered office of which is situate at 142, Wardour Street, in the County of London (the name of which has been

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

changed to United Artists Corporation Limited and is hereinafter called "the English Company"), and I am duly authorized to make this affidavit on behalf of each of the said Companies.

2. I am advised that, having regard to the British Finance Acts 1922 and 1927, as a Director of the English Company, I should make, and I hereby make, an affidavit as to the following facts:

3. Mr. F. M. Guedalla, who is a Director and Solicitor of the English Company, has sent me his letters addressed to the Clerk to the Special Commissioners, of November 14, 1928 and November 5, 1929, from which letters I observe that he labors under a confusion as to certain relevant facts, which I beg herein to correct.

4. The confusion, as I understand it, arises by reason of conversations which I or Mr. Burkan, who is one of the Directors of the American Company, and Counsellor for Mr. Chaplin and Mr. Chaplin's concerns, have had with Mr. Guedalla in former years; we were discussing the difficulties and uncertainties connected with the stock of the American Company through the arrangements made with regard to the holdings of such stock, but Mr. Guedalla understood that the said arrangements extended to the English Company. This is not and never has been the case.

5. At the same time, Mr. Guedalla is correct in one respect, namely, that some of the persons interested in the stock of the American Company did

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

at one time raise a question whether the shares of the English Company should not belong to them, instead of to the American Company; but as I hereinafter explain, all the shares of the English Company, from the outset and down to date, have always belonged to the American Company and to nobody else.

6. The American Company was formed on May 21, 1919. The Preferred Stock, which was redeemed in 1930 under the provisions of the Company's resolutions as and when issued, was registered in the names of the following stockholders:

Charles Chaplin .....	\$100,000
Douglas Fairbanks .....	30,000
Elton Corporation .....	70,000
Mary Pickford Fairbanks.....	30,000
Mary Pickford Corporation.....	70,000
D. W. Griffith Inc.....	100,000
Samuel Goldwyn, Inc.....	75,000
Joseph M. Schenck.....	100,000
Art Cinema Corporation.....	100,000

All of the said Preferred Stock was held by them in March, 1924, and continued to be so held until redeemed. In addition to that, Miss Gloria Swanson and her Producing Corporation, had agreed in 1925 to subscribe \$100,000 Preferred Stock, but the agreement was superseded by other arrangements made subsequently.

7. In the case of some of the individuals above named, I believe that they in fact hold some or all or the said Preferred Stock beneficially for their

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

Producing Corporations, but it is not in my province to be acquainted with such details.

8. When the American Company was incorporated, it was agreed to give to Mr. William Gibbs McAdoo, formerly Treasurer in the Cabinet of the U. S. A. and who took part in legal services for the American Company, 1,000 shares of Common Stock of no par value. The Company redeemed these shares in 1920, and subsequently in 1924, issued them to Mr. Joseph M. Schenck.

9. In 1924 the American Company issued to Mr. Charles Chaplin, Mr. Douglas Fairbanks and Mrs. Mary Pickford Fairbanks and Mr. D. W. Griffith, each of them 1,000 shares of Common Stock of no par value. Mr. D. W. Griffith subsequently transferred 500 of his shares to D. W. Griffith, Inc. a corporation incorporated according to the Laws of the State of Maryland, U.S.A., and at a later date he transferred his remaining 500 shares to that corporation. Mr. and Mrs. Fairbanks held some of their Common Stock on behalf of their Producing Corporations.

10. When the American Company was incorporated, the Artists, for themselves and their Producing Corporations, entered into agreements to deliver an agreed number of films over an agreed period of years, and as some security for their fulfilling this obligation, it was arranged that all their shares of Common Stock should be deposited with me to be held by me in escrow and as and when the

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

films from time to time were delivered, I released the shares of Common Stock to them, or as directed by them. The said shares at all material times belonged to and were in the names of the said stockholders. In certain cases, some of the artists were in default in delivery for a considerable time.

11. Mr. Joseph M. Schenck joined the American Company and became a stockholder on November 22, 1924, and took the said 1,000 shares of Common Stock, entering into similar escrow agreement for delivery of films.

12. Mr. Schenck represented two large concerns—Joseph M. Schenck Productions Inc. and Art Cinema Corporation—both Companies being incorporated and carrying on business in the U.S.A. Shortly afterwards, another company in which he is interested, viz., Feature Productions, Inc., also incorporated and carrying on business in the U.S.A., joined the United Artists.

13. Gloria Swanson entered into agreements with the American Company on behalf of herself and Gloria Swanson Productions, Inc., an American Company, and thereunder became on July 15, 1925 entitled to 1,000 shares of Common Stock of no par value. These shares, as in the case of Mr. Schenck, were also deposited with me in escrow.

14. Mr. Samuel Goldwyn became a stockholder, both as regards Preferred Stock and Common Stock, by agreement on August 29, 1925 and entered into agreements representing Samuel Gold-

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

wyn, Inc., also incorporated in and carrying on business in the U.S.A., and while he and his company were in course of delivering the agreed films to the American Company for distribution, I held his Common Stock in escrow.

15. Mr. Hiram Abrams, who for many years had been President of the American Company, died at the end of 1926. Mr. Joseph M. Schenck succeeded him as President of the American Company.

16. In 1920, one Morris Greenhill entered into an agreement with the American Company for the distribution of its films in the British Isles and deposited with the American Company \$100,000. He failed to perform his obligations and the said deposit was forfeited.

17. In consequence of the failure by the said Greenhill to carry out his obligations as aforesaid, it was decided that an English Company should be formed in order to distribute the said films in the British Isles. The American Company utilized part of the said money for subscribing the 7,500 shares of this English Company which was incorporated on March 15, 1921, with the said object.

The American Company has never limited itself to the films of the said artists and their producing corporations, but often acquires other films, and if it has the British rights to same, sub-licenses the English Company for the purposes of distribution.

18. The American Company had in the course of its business sustained a large loss in connection with

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

one of Mr. Griffith's films, and had been indemnified against such loss by Mr. Chaplin and Mr. and Mrs. Fairbanks. It was under the arrangements made to effectuate such indemnity that on October 17, 1928 the said four persons, and in the case of two of them, their producing corporations, relinquished to the American Company all their title and interest to and in the said film, and inasmuch as at one time they had put forward some claim to the shares of the English Company, it was thought advisable to include a surrender to the American Company of such claims. The American Company relieved and released these four persons and their said producing corporations from guarantees which they had given in regard to the said film.

19. A copy of the said minutes of October 17, 1928 was sent to Mr. Guedalla for his information, and he informs me that he inferred therefrom that the artists and their Producing Corporations were the beneficial owners of the shares of the English Company. But this is not the case. There had been some talk at different times that they were entitled to Mr. Greenhill's forfeited deposit, and therefore to the investment thereof. These claims were never pressed or taken seriously but the Directors and legal advisers of the American Company took the opportunity on October 17, 1928 to put the matter beyond any possible doubt.

20. The shares of the English Company have always been registered in the names of nominees.

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

Originally the seven signatory shares were registered in the names of Mr. F. M. Guedalla, and six employees of his firm. The remaining 7493 shares were registered in the name of the First Managing Director of the English Company, and of Mr. F. M. Guedalla, jointly. There have been various Managing Directors, and whenever there has been a new Managing Director, the shares were registered in the joint names of the Managing Director for the time being of the English Company; and of Mr. F. M. Guedalla.

One of the Mr. Guedalla's clerks has left him, and his signatory share has been transferred into another name, namely the name of Mr. Tindall has been substituted by the name of Mr. Vincent Carl Daviss.

21. The instructions given to Mr. Guedalla originally, with which he has always complied, were to see that the certificates and blank transfers were deposited in the name of the American Company with the London Branch of the Guaranty Trust Company of New York, who in fact are the bankers of the American Company.

22. No one had any authority to withdraw the said certificates and transfers from the Guaranty Trust Company except on the authority of Mr. Hiram Abrams, President of the American Company. Mr. Hiram Abrams died in 1926, and since his death the Guaranty Trust Company have only been entitled to act on resolutions of the Board

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

of Directors of the American Company. No one else has or ever had any authority to deal with any of the said shares.

23. The beneficial ownership of the shares of the English Company has always been in the American Company, and no one else. The English Company was formed, as I have stated, with money provided by, and belonging exclusively to, the American Company.

24. The shares of the English Company have always been listed in the balance sheet of the American Company as its property and among its assets, and have never been treated as held for or belonging to anyone else.

In deposing and making the foregoing statement in affidavit form, as is permissible under our local law, I do so with the conscientious belief that it has the same force and effect as a statutory declaration such as that provided for in the British Statutory Declarations Act of 1835, and I do state that

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

the contents of my foregoing statement are true to the best of my knowledge, information and belief.

DENNIS F. O'BRIEN

Director of and Attorney-at-law for the

UNITED ARTISTS CORPORATION

(The American Company)

Subscribed and sworn to before me this 25 day of July, 1930.

ELIZABETH A. REILLY

Notary Public.

New York County Clerk No. 341 etc.

Seal of British Consulate General

New York

No. 30775 Series C

State of New York,

County of New York—ss.

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, Do Hereby Certify, That Elizabeth A. Reilly whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions

(Testimony of Dennis Francis O'Brien.)

Petitioner's Exhibit No. 16 (Continued.)

and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 25 day of July, 1930.

[Seal]

DANIEL E. FINN

Clerk

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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Mr. Green: You may cross examine, Mr. Horner.

Cross Examination

Q. (By Mr. Horner) Mr. O'Brien, you stated this morning [140] on direct examination that upon the distribution to Mr. Chaplin of the certificates of stock for 334 shares and dividends that the sum of interest was also paid to Mr. Chaplin. Was that interest paid by the corporation, or did that represent the interest paid by the bank for the deposit and use of those dividends? A. I can't—

Mr. Green (Interrupting): Mr. Horner, we will stipulate that it was paid by the bank.

(Testimony of Dennis Francis O'Brien.)

Mr. Horner: Paid by the bank?

Mr. Green: Yes.

Mr. Horner: That is all right.

Q. Mr. O'Brien, was the certificate of stock issued to Mr. McAdoo and delivered to him at any time prior to the severance of his connection with the corporation? A. Yes.

Q. As counsel in April, 1930? A. Yes.

Q. When were those certificates delivered to Mr. McAdoo?

A. About the same time that all of the stock was delivered.

Q. Well, I don't think there is any evidence in the record so far showing delivery to the other artists.

A. Yes. It was delivered on September 7th of that year, 1929.

Q. September, 1919? [141]

A. The same date as Oscar Price's letter, who was the president, delivered the certificate to me.

Q. Were Mr. McAdoo's certificates of stock ever held in escrow by the corporation or by you?

A. No.

Q. Never were? A. Never were.

Q. And as I understand you, this morning you said that he had discontinued his services with the corporation about April, 1930?

A. About that time.

Q. April, 1920, I meant to say.

A. Yes. At the first annual meeting he withdrew and we purchased his stock. I say "we," the

(Testimony of Dennis Francis O'Brien.)

United Artists purchased the stock and assumed an obligation that Mr. McAdoo had in connection with the production of the motion picture "Romance" which he had negotiated.

Q. But prior to his withdrawal from the company as general counsel, the certificates of stock for 1,000 shares of the United Artists Corporation had been delivered by Mr. McAdoo?

A. That is correct.

Q. And they never were in escrow by you or by the corporation?

A. They were never in escrow. [142]

Mr. Horner: That is all.

Mr. Green: That is all, Mr. O'Brien.

(Witness excused.)

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Mr. Green: Mrs. Watt.

LOIS E. WATT

a witness on behalf of Petitioner, was duly sworn and testified as follows:

Direct Examination

Q. (By Mr. Green) Will you state your full name, please? A. Lois E. Watt.

Q. Mrs. Watt, what is your business or occupation?

A. Bookkeeper and secretary and treasurer.

Q. For whom?

A. The corporation's and also Mr. Chaplin.

(Testimony of Lois E. Watt.)

Q. Mr. Chaplin personally? A. Yes.

Q. How long have you been in his employ?

A. Since 1920.

Q. You were in his employ during the year 1935?

A. Yes, I was.

Q. During the year 1935 did Mr. *Chaplin* dividends in the amount of \$44,532.22, being dividends on 334 shares of stock of United Artists Corporation? A. Yes, he did. [143]

Q. And those dividends were paid over to him at the time 334 shares of the common stock of United Artists Corporation were delivered to him?

A. Yes, they were.

Q. Now, at the time those dividends were received did Mr. Chaplin also receive interest on those dividends? A. Yes, he did.

Q. What was the amount of that interest?

A. \$995, I believe.

Q. \$995?

The Court: \$995?

Q. (By Mr. Green) Is that right?

A. Yes.

Q. Now, did you supervise the preparation of Mr. Chaplin's 1935 Federal income tax return?

A. Well, it was taken from the records which I kept by Price Waterhouse.

Q. Do you know of the said sum of \$995, whether or not that was included in the tax return as interest income? A. Yes, it was.

Q. And was the tax paid on that income?

A. Yes, sir.

(Testimony of Lois E. Watt.)

Q. Mrs. Watt, you are familiar with a claim for refund that was filed with the Federal Government involving the dividend of \$44,532.22, which I just referred to? [144]      A. Yes, I am.

Q. And upon what date was that claim for refund filed?

A. Well, I have it on my record here. I believe it was August of 1935, was it?

Q. Will you look at the record?

A. I will look at my record and be sure. I didn't memorize it offhand.

March 8, 1939.

Mr. Green: You may examine, Mr. Horner.

Mr. Horner: I have no questions.

(Witness excused.)

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Mr. Green: I would like to call Mr. White.

J. R. WHITE

a witness on behalf of Petitioner, was duly sworn and testified as follows:

Direct Examination

Q. (By Mr. Green) Will you state your full name, please?      A. J. R. White.

Q. Mr. White, where do you live?

A. Glendale, California.

Q. And what is your business or occupation?

A. I am a public accountant with Price Waterhouse and Company.

(Testimony of J. R. White.)

Q. And how long have you been a public accountant? [145]      A. 15 Years.

Q. And Price Waterhouse and Company, are they the auditors for Mr. Charles Chaplin?

A. They are.

Q. And how long have they been acting in that capacity?      A. Since 1927.

Q. And have you been employed by Price Waterhouse and Company since 1927?      A. Yes.

Q. As a representative of Price Waterhouse and Company, Mr. White, have you been supervised, or have the annual audits of the books of Mr. Charles Chaplin been made under your direction and control?

A. In certain years; not for all years, no.

Q. Was the audit for the year 1931 made under your direction and control?

A. Not the audit, no, sir.

Q. Do you have working papers in connection with the audit for the year 1931?      A. Yes, sir.

Q. Now, I will ask you if any dividends were paid by United Artists Corporation to Mr. Charles Chaplin, or any dividends were delivered to Mr. Charles Chaplin in the year 1931 by United Artists Corporation in connection with any shares of common stock which had previously been held in escrow. [146]

A. Well, Mr. Chaplin's records show that in 1931 in February he received \$5,000 in dividends on stock which had been released to him from escrow, and also that he received \$4,980 in dividends

(Testimony of J. R. White.)

in respect of 167 shares of stock which were released to him in 1931.

Q. And do you recall in connection with what picture those 167 shares of stock were released to Mr. Chaplin in 1931?

A. Mr. Chaplin's records show that that was released upon delivery of the negative to "City Lights."

Q. Now, did you have charge of the preparation of Mr. Chaplin's income tax return for the year 1931?

A. Yes, it was prepared under my direct supervision.

Q. And were those dividends that were delivered to Mr. Chaplin at the time the 167 shares of stock were released from escrow reported in Mr. Chaplin's 1931 income tax return?

Mr. Horner: Your Honor, I object to that question on the grounds it is irrelevant and incompetent. We have the year 1935; not 1931. I don't see how it can be material.

Mr. Green: If your Honor please, I claim it is material in this respect, that throughout a number of years, and as Mr. Chaplin produced pictures from time to time and released them to United Artists Corporation and received a release of his stock from escrow, that he did not report those shares of stock as constituting income, [147] that he didn't consider them as income, and that the Government never took exception to the manner

(Testimony of J. R. White.)

in which he reported either the stock certificates or the dividends.

The Court: What difference would that make?

Mr. Green: It would have a bearing for this reason: Mr. Chaplin had a tax controversy in connection with the year 1931, the year in which these particular dividends were received. His returns and his books for that year were thoroughly audited. It was made known to the Respondent the nature of those dividends, their sources and everything else, and the Respondent in that year allowed them to be taxed as dividend income, while in 1935 when we have an exact situation they are now attempting to say that they should be treated and taxed as ordinary income.

The Court: There isn't anything pleaded in the way of estoppel, is there?

Mr. Green: No, your Honor.

The Court: There has been no adjudication of the matter so that there is any *res adjudicata*.

Mr. Green: There has been a final settlement of his 1931 tax.

The Court: That wouldn't be *res adjudicata*.

Mr. Green: I don't believe it would.

The Court: I fail to see where it is at all material. [148] I will sustain the objection.

Mr. Green: May we have an exception?

The Court: Exception may be noted.

Mr. Green: That is all, Mr. White.

Mr. Horner: No questions, Mr. White.

(Witness excused.)

Mr. Green: Mr. Chaplin.

CHARLES SPENCER CHAPLIN

a witness in his own behalf, was duly sworn and testified as follows:

Direct Examination

Q. (By Mr. Wright) Did you state your name?

A. Charles Chaplin, Charles Spencer Chaplin.

Q. You are the Petitioner in this matter?

A. Yes.

Q. What is your business or occupation, Mr. Chaplin?

A. I am a producer of motion pictures and an actor.

Q. How long have you been engaged in the motion picture business?

A. Approximately, oh, 27 years.

Q. Since on or about 1914? A. Yes.

Q. Were you one of the originators of United Artists Corporation in 1919? [149] A. Yes.

Q. Who were the other originators?

A. Douglas—Mary Pickford, Douglas Fairbanks, D. W. Griffith, I think, and myself.

Q. What were the purposes for which United Artists Corporation was organized, Mr. Chaplin?

A. It was for the purpose of independence, which would give us an opportunity of keeping faith with the public to make the best pictures we possibly could without the curtailment of any trust or organization, and also to thwart any trust movement on the part of the industry which was about to take place at that time.

(Testimony of Charles Spencer Chaplin.)

Q. In other words, it was for the purpose of controlling the production of your respective photoplays and for having a release of your own ownership, is that correct? A. Yes.

Q. Were you under contract to produce photoplays for distribution for First National Pictures in 1919? A. Yes.

Q. And is it a fact that because of your contract with First National your United Artists contract provided for a later date of delivery of your photoplays than for the delivery of the photoplays of the others? A. Yes, it did.

Q. When did you complete the production of photoplays for [150] distribution by First National Pictures?

A. I don't know the exact date. I think there is a record of it.

Q. Was "The Pilgrim" the last photoplay you made for First National distribution?

A. I am not sure. I believe so. I think there was another picture issued. I am not quite sure. I am not positive.

Q. It was on or about 1922 that you completed your commitment, whatever it was, for First National Pictures distribution?

A. Yes, I think so. I believe so.

Q. Were you able to perform any services in connection with the photoplays made for United Artists release prior to the time that you completed the last photoplay released by First National Pictures, Incorporated? A. No.

(Testimony of Charles Spencer Chaplin.)

Q. Now, prior to February, 1919, Mr. Chaplin, what length motion pictures had you been producing?

A. Oh, two and three reels; no more; with the exception of "The Kid," with the exception of "The Kid," which was an exceptional subject matter, and I think that was about six reels, and "The Pilgrim," which was also a five reel picture.

Q. You have heard Dennis O'Brien testify this morning? A. Yes. [151]

Q. You heard reference to the agreement of February 5, 1919, which is Petitioner's Exhibit 1. You heard Captain O'Brien testify to it?

A. Yes.

Mr. Wright: I think, Mr. Horner, if I may be privileged to ask him without reference to it.

Mr. Horner: That is all right.

Q. (By Mr. Wright) That contract called for photoplays of from 16— to 3,000 feet in length. I will now ask you if any of the photoplays which you produced and released through United Artists Corporation were of 1600 to 3000 feet in length.

A. No.

Q. They were all longer photoplays?

A. Much longer.

Q. Why did you change the length of the photoplay that you produced?

A. Oh, it was the subject matter I thought warranted of a longer length, and I wasn't restricted to, as I thought, to any time; and I suppose it was the subject matter.

(Testimony of Charles Spencer Chaplin.)

Q. Now, you delivered these photoplays to United Artists for distribution under your distribution contract dated February 5, 1919?

A. Yes.

Q. And there was no other contract or amendment or arrangement made? They accepted it, the photoplays, even [152] though they were of a greater length, isn't that true? A. Yes.

Q. When you were contemplating the organization of United Artists Corporation, is it true that you set forth in the contract that you would make nine short reel pictures because of your past experience in making the short pictures?

A. Yes, it was based on that.

Q. And it is also true that "The Kid" and "The Pilgrim" were produced by you subsequent to the signing of this contract of February 5, 1919? A. I believe that is so.

Q. Introduced as Petitioner's Exhibit 1.

Mr. Chaplin, was there any discussion between you and United Artists Corporation or any of the other stockholders at the time of the expiration of the three year period called for in your contract with reference to delivery back to United Artists of the 1,000 shares of common stock previously issued you and deposited with Captain O'Brien because you had not delivered any photoplay? A. No.

Q. Referring now, Mr. Chaplin, to the negotiations leading up to the formation of United

(Testimony of Charles Spencer Chaplin.)

Artists, did those negotiations endure for a number of months?      A. They did, yes. [153]

Q. And in the conferences and negotiations, did Miss Pickford, Mr. D. W. Griffith, Mr. Fairbanks, Mr. Dennis F. O'Brien, and Mr. Sydney Chaplin and Mr. Nathan Burkan, Senator McAdoo and Mr. Cotton and Mr. Franklin all participate?

A. Yes.

Q. Do you recall any other names or the names of any other persons who participated in those negotiations?      A. I don't.

Q. Now, was it the result of the negotiations carried on with these people just mentioned that you executed the agreement of February 5, 1919 introduced as Petitioner's Exhibit No. 1?

Mr. Horner: Just a moment. Will you read that question, Mr. Reporter?

(The question referred to was read by the reporter, as set forth above.)

Mr. Horner: I object to that question, your Honor, on the grounds it is a leading question.

Mr. Wright: I am trying to conserve time.

The Court: Overruled.

Q. (By Mr. Wright) I will show you the exhibit.

A. (Examining document.) Yes.

Q. You testified, Mr. Chaplin, that you were present during the testimony of Mr. O'Brien all day today? [154]      A. Yes.

Q. Has Mr. O'Brien to the best of your recol-

(Testimony of Charles Spencer Chaplin.)

lection given the substance of the negotiations which led up to the formation of United Artists Corporation?

A. Yes, as I remember them.

Q. Do you recall now any other phases of the negotiations which were not covered by Mr. O'Brien?

A. No, I don't. I think, as I say, the question of the 1,000 shares of common stock, putting them in escrow, was a part of goodwill and an added security for the company in order that we would carry out the terms of our signed contract distributing pictures.

Q. That stock was issued in your name in 1919, was it not, Mr. Chaplin?

A. Yes.

Q. And ever since that time you have exerted all control over that stock?

A. Yes.

Q. As a stockholder?

A. Yes.

Q. You have from time to time attended stockholders' meetings personally?

A. Yes.

Q. Or by proxy, and always voted 1,000 shares?

A. I have always voted equally with the other members of [155] the stockholders, of the stockholder members.

Q. Mr. Chaplin, do you remember negotiations in 1920 held among the owners of United Artists Corporation, owners of the stock of United Artists Corporation, and a banking firm known as Dillon, Reid and Company?

A. I do.

Mr. Horner: I object to that as leading, and it assumes facts not in evidence.

(Testimony of Charles Spencer Chaplin.)

The Court: Well, of course, it is a little leading. Ordinarily that, of course, doesn't make much difference. We haven't had that name before in this record. I don't know what there is about it. We will permit him to answer the question. Proceed. It is preliminary.

Q. (By Mr. Wright) Did you answer the question, Mr. Chaplin? A. What is the question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: Yes, I do.

Q. (By Mr. Wright) In these negotiations, Mr. Chaplin, did they discuss with you in your presence and with your co-owners of United Artists Corporation the purchase of the common stock of United Artists Corporation?

A. Whom do you mean?

Q. Representatives of Dillon & Read and Company. [156] A. Yes.

Q. Were you to receive any portion of the purchase price of said stock? A. Yes.

Q. What proportion?

A. I think it was the same proportion as the rest of the stockholders.

Q. In other words, it was contemplated that all owners of stock would receive a like amount of money, is that correct? A. Yes.

Q. Mr. Chaplin, do you recall the issuance of the stock, of the common stock, in 1919, which was deposited with Mr. O'Brien under the agreement?

(Testimony of Charles Spencer Chaplin.)

A. No, I don't really recall it, the exact time.

Q. Do you recall there was 1,000 shares of common stock issued in your name?

A. Yes, oh, yes.

Q. What did you pay for that stock?

A. Well, I think we paid something like \$35,000.

Q. I am afraid I have confused you, Mr. Chaplin.

At the same time that the common stock was issued, did you subscribe for preferred stock of United Artists Corporation?

A. I don't quite remember. I don't know. You see, my [157] brother and all my other associates attended to that business more or less. I don't know whether we had the common stock first or the preferred stock. I wouldn't quite know. I don't quite understand the question, as a matter of fact; and I must say that I never saw the actual stock. I knew that it was put in my name and put up in escrow. They told me that I had 1,000 shares of common stock. When that was, whether it was prior to the preferred stock or not, I don't know.

Q. Well, do you recall what the consideration was for the issuance of the common stock?

A. For the signing, yes, for the signing—making a contract with the company.

Q. The distribution contract?

A. Distribution contract.

Q. And at the same time, Mr. Chaplin, did you

(Testimony of Charles Spencer Chaplin.)

subscribe to any preferred stock of United Artists Corporation?      A. I think so, yes.

Q. Mr. Chaplin, you have testified that you have been in the motion picture business since 1914. Tell us, if you will please, the standing of Miss Mary Pickford in the motion picture industry just prior to and as of February, 1919.

Mr. Horner: If your Honor please, I would like to object to that question as wholly immaterial to any [158] issue in this case.

Mr. Wright: May it please the Court, it is directed towards the consideration going to United Artists Corporation for the issuance of common stock. Part of the consideration under the terms of the February 5, 1919, agreement was the execution by each of the organizers, excepting Mr. McAdoo, of a distribution contract, the subscription of preferred stock, and it is pertinent, in our opinion, to show that a goodwill, a tremendous goodwill, was the result of these outstanding people contracting with United Artists Corporation.

The Court: Well, Mr. O'Brien so testified this morning, and Mr. Chaplin has more or less repeated the testimony by proxy, but if you have anything else to add, I will permit him to answer. The objection will be overruled.

Q. (By Mr. Wright) Will you answer the question, Mr. Chaplin?

A. What was the question?

Mr. Wright: Will you read the question, Mr. Reporter?

(Testimony of Charles Spencer Chaplin.)

(The question referred to was read by the reporter, as set forth above.)

The Witness: Well, Miss Mary Pickford I think in the eyes of the motion picture people was the First Lady of filmland. She was the most important female star. I think, in the motion picture business at that time. [159]

Q. (By Mr. Wright) Will you tell us, Mr. Chaplin, the standing of Mr. Fairbanks as an actor and producer of photoplays at that time?

A. I would say he also was the First Gentleman of the motion picture industry, and a very important star in the industry.

Q. Will you also tell us the standing of Mr. D. W. Griffith of the producers and directors?

A. Undoubtedly he was recognized as the greatest director at that time.

Q. All four of you were constantly in demand by other companies, were you not, at this time?

A. Yes.

Q. At this time you received numerous propositions from other corporations, did you not?

A. Yes.

Q. To produce photoplays for distribution through other companies?

A. Yes, several.

Q. Would you consider, Mr. Chaplin, that because of the unusual and outstanding abilities and favor with the public of Miss Pickford, Mr. Fairbanks and Mr. Griffith, as well as yourself, the

(Testimony of Charles Spencer Chaplin.)

execution of the agreement of February 5, 1919, and the agreement to subscribe to preferred stock of United Artists Corporation and the execution of the [160] respective distribution contracts was a fair consideration for the issuance of common stock?       A. Yes.

Mr. Horner: Just a moment, please. If your Honor please, I don't like to be too insistent, but that is a very leading question, and it seems to me it is objectionable from every standpoint. I don't know whether Mr. Wright is testifying or whether Mr. Chaplin is testifying.

The Court: Yes. The questions are quite leading. When we get into controversial matters, it is perhaps as well to not lead the witness. I will sustain the objection to the particular question.

Mr. Wright: Might I be heard on that, if your Honor please?

The Court: You may.

Mr. Wright: Mr. Chaplin was an organizer of United Artists Corporation. He has testified he has had 27 years experience in the motion picture industry. I think he is competent by reason of those two things alone to testify as to value, as to adequacy of consideration for the issuance of the common stock. It is on that theory that we offered the question.

The Court: You may desire to reframe the question.

Mr. Wright: I will reframe it. I wanted to save time, if I could. [161]

(Testimony of Charles Spencer Chaplin.)

Q. Mr. Chaplin, you have testified that Miss Pickford, Mr. Fairbanks, and Mr. Griffith each had unusual worth in the motion picture business in 1919, is that correct?      A. Yes.

Q. Because of that unusual worth, in your opinion would any goodwill result to United Artists Corporation by reason of their contracting with United Artists Corporation?

A. Yes. I could give you an example of that.

In the beginning of the idea of the forming of United Artists, Douglas Fairbanks, Mary Pickford, they had difficulty in getting a new contract from their companies, and the company that I was working for, the First National, were also very indifferent about my plea for certain concessions that I wanted them to make for the purpose of making my pictures. And we felt there was something in the air. And we had heard that there was to be a convention of the First National, the Metro. and the Goldwyn Company, and they were coming out to form a combine and to sign up the exhibitors throughout America on a six year contract. And having, of course, Mary Pickford under contract, and having Douglas Fairbanks under contract, and the First National at that time having me under contract for four pictures, or something like that to go, they were going to sign these exhibitors up.

[162]

And we heard about this, and to offset that—it was supposed to be a \$40,000,000 trust corporation which they were all going to merge for the purpose,

(Testimony of Charles Spencer Chaplin.)

because they had these stars in hand,—and I think it was my brother, and also several other associates of Mary and Douglas that got the idea and said, “Well, if we made a gesture and merely, just a letter in which we said at some future date we would merge and from our own distributing company, it would stop this big corporation, this big trust, from combining.”

And we had no intention—first, we had no intention at first of really going through with it. All we felt was that if we just put our names together, that that in itself would insure the exhibitors that they hadn’t got all of the stars under contract and that this big combine had nothing to do with the then important stars of the industry.

So we met at the Hotel Alexandria, which was at that time the place where all the motion picture people congregated, and we were there on the million dollar rug, as they called it in those days, and we just made a gesture. This convention used to meet at dinner, and so we had a little convention of our own, and we sat at a table and we started making figures on the tablecloth and impressing, and suddenly each one of these that belonged to the other corporations would come into the dining room and they [163] could see Mary Pickford, Douglas Fairbanks, D. W. Griffith, William S. Hart and myself making figures on the tablecloth. And it made a great impression.

Then we gave out an announcement. I think the captain referred to it as the declaration of inde-

(Testimony of Charles Spencer Chaplin.)

pendence. I don't remember the exact wording, but I do know that the next day they all folded up and went back and there was no more \$40,000,000 corporation. And after that we said, "This is a grand idea. Why not go through with this idea and let us really form a corporation. Let us really go through with it." And we did.

So it was absolutely the goodwill and the influence we had and our names put together that was of great value. It absolutely disintegrated the trust at that time.

Q. I will show you a receipt, Mr. Chaplin, marked Exhibit 12.

As the Petitioner's Exhibit No. 12, Mr. White, are these key numbers correct numbers?

Mr. Green: No. Those numbers should come off, Mr. Wright.

Mr. Horner: What document do you have, Mr. Wright?

Mr. Wright: Dated December 11, 1919.

Pardon me. I am sorry. I thought they were introduced when all of them went in.

Q. Mr. Chaplin, is that your signature? [164]

A. Yes.

Mr. Wright: Have you seen a copy, Mr. Horner?

Mr. Horner: I have not.

Mr. Wright: We would like to introduce a copy of that as the next exhibit.

May we introduce it, if your Honor please, and withdraw it and substitute conformed copies?

(Testimony of Charles Spencer Chaplin.)

The Court: Very well. No objection.

Mr. Horner: No objection.

The Court: It will be received as Petitioner's Exhibit No. 56.

(The said document, so offered and received in evidence, was marked Petitioner's Exhibit 56, and made a part of this record.)

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PETITIONER'S EXHIBIT No. 56

Received from Dennis F. O'Brien, Depositary, the certificate of deposit delivered to me as attorney for Charles Chaplin, evidencing deposit with Mr. O'Brien of nine stock certificates representing in the aggregate, one thousand shares of common stock of the United Artists Corporation, pursuant to a certain agreement dated August 5th, 1919.

Dated, New York, September 11th, 1919.

CHARLES CHAPLIN.

[Endorsed]: U.S.B.T.A. Filed Feb. 26, 1941.

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The Court: Will you identify it briefly for the record as to what it is?

Mr. Wright: Yes. That is the receipt for the delivery to Mr. Chaplin. Perhaps I could read it into the record.

“Received from Dennis F. O'Brien, deposi-

(Testimony of Charles Spencer Chaplin.)

tary, certificate of deposit delivered to me as attorney for Charles Chaplin evidencing deposit with Mr. O'Brien of nine stock certificates representing in the aggregate 1,000 shares of common stock of United Artists Corporation pursuant to a written agreement dated August 5, 1919. Dated, New York, [165] September 11, 1919. Charles Chaplin."

Q. Mr. Chaplin, I show you a memorandum agreement dated June 1, 1932, addressed to Mr. Joseph M. Schenck as well as United Artists Corporation, executed by United Artists Corporation, Mary Pickford Fairbanks, Douglas Fairbanks, Charles Chaplin, David W. Griffith, and D. W. Griffith, Inc. and ask you to examine that and state whether or not you signed the original of that conformed copy.

A. (Examining document.) Yes.

Q. Referring to the first page of this agreement, Mr. Chaplin—you answered that question that you had signed the contract, did you not?

A. I had signed the original.

Q. This agreement recites the following, Mr. Chaplin:

"That at the time of the execution of the aforesaid agreement all of the preferred and common stock of United Artists Corporation then outstanding was owned by Mary Pickford Fairbanks, Douglas Fairbanks, Charles Chaplin, David W. Griffith, and D. W. Griffith, Inc.

(Testimony of Charles Spencer Chaplin.)

subject to certain then existing escrow agreements pertaining to the common stock."

Was that a fact?

A. Yes. My mind was——

Mr. Wright: Mr. Reporter, will you read the question, please? [166]

(The question referred to was read by the reporter, as set forth above.)

The Witness: Yes.

Q. (By Mr. Wright) Mr. Chaplin, I show you a letter dated October 29, 1919, the United Artists Corporation. A. Yes.

Q. And ask you if you received that letter.

A. (Examining document) I suppose so. I am not definite, because, as I say, I had my office and everybody to know those things. I don't know whether I personally received it, but I think it was notified to me. I was notified of the fact, I am sure. It is going back a long time.

Mr. Wright: Yes, that is true.

Will you stipulate, Mr. Horner, that this letter of October 27, 1919, the United Artists Corporation to Mr. Chaplin, has attached to it a balance sheet, consolidated balance sheet?

Mr. Horner: May I look at it a moment?

(Examining document.) I will stipulate, Mr. Wright, that the letter you refer to did have attached to it a copy of a paper called "The Consolidated Balance Sheet." As to whether those figures are accurate or inaccurate, of course I am

(Testimony of Charles Spencer Chaplin.)

not prepared to say, and I don't want to stipulate to that effect. I have had no opportunity to check them, if that will help you any. [167]

Mr. Green: Mr. Horner, this balance sheet is being offered for the purpose of showing—in the assets it has an item “Artists’ contracts, \$25,000 and capital stock common, \$25,000”—it is offered for the purpose of showing that the corporation set upon its books a value of \$25,000 for the four artists’ contracts that were signed on February 5, 1919, and on its liability side, \$25,000 is the value of that common stock. The balance sheet is offered for that purpose and no other purpose.

Mr. Horner: For that limited purpose, then, I have no objection.

Mr. Wright: Would you rather stipulate to that fact, or would you rather introduce the copy of the consolidated sheet in evidence?

Mr. Horner: I think it would be preferred to just stipulate the figures Mr. Green read and keep out of the record the immaterial part of this exhibit.

Mr. Wright: Very well. Then it will be stipulated that the facts as recited by Mr. Green were the situation at the close of business September 27, 1919?

Mr. Horner: That is right.

Q. (By Mr. Wright) Mr. Chaplin, you have at all times treated the common stock and all of the common stock of United Artists Corporation as you

(Testimony of Charles Spencer Chaplin.)

have all other common stock which you have owned, have you not? [168]

Mr. Horner: Just a moment. That seems to be highly leading and objectionable, your Honor.

The Court: Well, perhaps counsel may reframe it and get the information desired. I suppose you mean by that as to what he has done with reference to voting it and attending directors' meetings and so on.

Mr. Wright: Yes, sir.

The Court: Suppose you reframe it, if you will.

Q. (By Mr. Wright) Mr. Chaplin, since September, 1919 at all stockholders' meetings of United Artists Corporation you have by person or by proxy voted 1,000 shares of common stock, have you not?

A. Yes.

Q. Since September, 1919 you have received all reports of the corporation as a stockholder?

Mr. Horner: Pardon me. I lost the context of the question. Will you read the question, Mr. Reporter?

(The question referred to was read by the reporter, as set forth above.)

The Witness: Yes.

Q. (By Mr. Wright) Other than the depositing the stock with Captain O'Brien—pardon me. I must apologize to the Court. I have known him as Captain. It is difficult to call him Dennis—Mr. Chaplin, you have exerted the same control over the United Artists common stock as you [169] have

(Testimony of Charles Spencer Chaplin.)

over any other stock that you have owned in the corporation, have you not?           A. I have.

Mr. Wright: That is all.

Mr. Horner: If you Honor will indulge me for about five minutes, I think possibly I can reach a very quick decision as to the extent of any examination.

The Court: Very well. We will suspend for a brief recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Mr. Horner: No cross examination, your Honor.

The Court: Very well.

Mr. Green: That is all.

(Witness excused.)

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Mr. Green: That is the Petitioner's case, your Honor.

Mr. Horner: The Respondent rests, your Honor.

The Court: That concludes the hearing of the testimony then, on both sides?

Mr. Horner: Yes.

[Endorsed]: U.S.B.T.A. Filed Mar. 14, 1941.[170]

In the United States Circuit Court of Appeals  
for the Ninth Circuit

B.T.A. No. 98795

CHARLES CHAPLIN,

Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

GUY T. HELVERING, Commissioner of Internal  
Revenue,

Petitioner on Review,

v.

CHARLES CHAPLIN,

Respondent on Review.

### ORDER

Now on consideration of the joint motion filed herein by counsel for the respective parties to the above-entitled proceedings, it is

Ordered, that the above-entitled proceedings be and they are hereby consolidated for briefing, hearing, argument and decision upon a single consolidated transcript of record to be certified and transmitted to this Court by the Clerk of the United States Board of Tax Appeals, and that the costs of printing the consolidated record on review be borne 75 per centum by the taxpayer and 25 per centum by the Commissioner.

It is further ordered that the Clerk of this Court

transmit to the Clerk of the United States Board of Tax Appeals a certified copy of this order to be by him incorporated in the record on review as certified and transmitted by him to the Court.

Done at San Francisco, California, this 1 day of Aug. A.D., 1942.

FRANCIS A. GARRECHT

Judge, United States Circuit  
Court of Appeals.

[Endorsed]: Filed Aug. 1, 1942.

A true copy

Attest: Aug. 1, 1942

(Seal) (S) PAUL P. O'BRIEN,  
Clerk.

[Endorsed]: U.S.B.T.A. Filed Aug. 6, 1942. [333]

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[Title of Circuit Court of Appeals and Cause.]

### STATEMENT OF POINTS

Comes Now the petitioner on review herein and makes this concise Statement of Points on which he intends to rely on the review herein, to-wit:

The United States Board of Tax Appeals erred:

1. In holding that the sum of \$44,532.22, which was received by taxpayer in 1935 from the escrow agent, and which was attributable to the accumulated dividends which the escrow agent had received in prior years on escrow stock which was also re-

leased to the taxpayer in 1935, was "received as dividends from a domestic corporation which is subject to taxation" under Title I of the Revenue Act of 1934 and hence the credit for normal tax, as specified in section 25(a) of such act, should be allowed; and in overruling the Commissioner's determination that this sum constituted ordinary income and was subject to the normal tax.

2. In holding that there is a deficiency in income tax for the year 1935 in the amount of only \$63,427.19. [334]

3. In failing to hold that there is a deficiency in income tax for the year 1935 in the amount of \$65,208.48.

4. In holding that said sum of \$44,532.22 did not lose its character as dividends merely because it was not delivered to taxpayer in the year declared.

5. In holding that "but if respondent's view be accepted that the amounts set aside in each year were not true dividends, then it would seem that the action of the corporation in the taxable year, making them unconditionally available to petitioner, was tantamount to the declaration and payment by the corporation of a dividend in the aggregate amount of \$44,532.22 upon the 334 shares which petitioner had just received."

6. In failing to hold that the sum of \$44,532.22 received by taxpayer from the escrow agent in 1935 was not received by him as dividends and is not the subject of normal tax credit.

7. In that its opinion and decision are contrary to law.

(Signed) J. P. WENCHEL,

RLW

Chief Counsel,

Bureau of Internal Revenue.

Service of a copy of the above statement of points is hereby acknowledged this 31st day of July, 1942.

(Sgd) LOYD WRIGHT

Attorneys for Respondent on  
Review.

JMM:mgc-6-10-42

[Endorsed]: U.S.B.T.A. Filed Aug. 5, 1942. [335]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF THE  
RECORD TO BE PRINTED

Come Now the parties to the above-entitled causes, by their respective counsel of record, and complying with the rules of this Court, pertaining to the designation of the portions of the record to be printed, state that they rely upon the entire record certified by the Clerk of the Board of Tax Appeals to this Court, and direct that said record so certified be printed as the record on review.

Respectfully submitted,

LOYD WRIGHT,

Attorneys for Taxpayer.

J. P. WENCHEL,

RLW

Chief Counsel,

Bureau of Internal Revenue.

Attorney for Commissioner of  
Internal Revenue.

[Endorsed]: U.S.B.T.A. Filed Aug. 5, 1942. [336]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD,  
PROCEEDINGS, AND EVIDENCE TO BE  
CONTAINED IN RECORD ON REVIEW.

To the Clerk of the United States Board of Tax  
Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause, in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries.
2. Pleadings:
  - (a) Petition.
  - (b) Answer.
  - (c) Amended Answer.
3. Board's findings of fact, opinion and decision.
4. Petitions for review.
5. Notices of filing petitions for review. [337]
6. Agreed Stipulation of Facts.
7. Transcript of hearing February 26, 1941, before U. S. Board of Tax Appeals at Los Angeles, California, pages 1 to and including line 21, page 122, but excluding pages 2, 2A, 2B, and the opening statements from line 8, page 8, to and including line 6, page 17.
8. Petitioner's Exhibits 1 to 56, inclusive.

9. Court order for consolidation.
10. Statement of points.
11. Designation of portions of the record to be printed.
12. This designation.

LOYD WRIGHT,

Attorneys for Taxpayer.

(Signed) J. P. WENCHEL,

RLW

Chief Counsel,

Bureau of Internal Revenue.

Attorney for Commissioner of  
Internal Revenue.

JMM:MGC-7-15-42

[Endorsed]: U.S.B.T.A. Filed Aug. 5, 1942. [338]

United States Board of Tax Appeals  
Washington

Docket No. 98795

CHARLES CHAPLIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

v.

CHARLES CHAPLIN,

Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 338, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 4th day of September, 1942.

[Seal]

B. O. GAMBLE,

Clerk, United States Board of  
Tax Appeals.

[Endorsed]: No. 10245. United States Circuit Court of Appeals for the Ninth Circuit. Charles Chaplin, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Charles Chaplin, Respondent. Transcript of the Record. Upon Petitions to Review a Decision of the United States Board of Tax Appeals.

Filed September 12, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 10245

BTA 98795

CHARLES CHAPLIN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### STATEMENT OF POINTS

Come now Charles Chaplin, petitioner herein, and adopts as his statement of points each and all of the assignments of error set forth in his petition for

a review of the decision of the United States Board of Tax Appeals, which constitutes a part of the record in the above entitled matter.

Respectfully submitted,

LOYD WRIGHT

CHARLES E. MILLIKAN

HERSCHEL B. GREEN

Counsel for Petitioner.

Copy mailed to J. P. Wenchel, Chief Counsel for Bureau of Internal Revenue on September 16, 1942.

[Endorsed]: Filed Sep. 18, 1942.

